# ELEMENTS

OF

# ECCLESIASTICAL LAW.

COMPILED WITH REFERENCE TO

THE LATEST DECISIONS OF THE SACRED CONGREGATIONS OF CARDINALS.

ADAPTED ESPECIALLY TO THE DISCIPLINE OF THE CHURCH IN THE UNITED STATES.

BY

REV. S. B. SMITH, D.D.,

FORMERLY PROFESSOR OF CANON LAW, AUTHOR OF "NOTES ON THE SECOND PLENARY COUNCIL OF BALTIMORE," "COUNTER-POINTS IN CANON LAW," "NEW PROCEDURE IN CRIMINAL AND DISCIPLINARY CAUSES OF ECCLESIASTICS," "COMPENDIUM JURIS CANONICI," "MARRIAGE PROCESS," ETC., ETC.

## Vol. I.

## ECCLESIASTICAL PERSONS.

NINTH EDITION,

CAREFULLY REVISED BY THE AUTHOR.

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**Nihil Obstat.**

H. GABRIELS, S.T.D.,
*Censor Deputatus.*

**Imprimatur.**

✠ MICHAEL AUGUSTINUS,
*Archiepiscopus Neo-Eboracensis.*

DATUM NEO-EBORACI,
DIE 14 JANUARII, 1887.

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✠ GULIELMUS HENRICUS,
*Archiepiscopus Cincinnatensis.*

DIE 17 JANUARII, 1887.

*Imprimatur to Former Editions.*

**Nihil Obstat.**

REV. S. G. MESSMER, S.T.P.,

*Censor Deputatus.*

IMPRIMATUR

OF HIS EMINENCE THE CARDINAL ARCHBISHOP OF NEW YORK.

**Imprimatur.**

JOANNES CARD. McCLOSKEY,

*Archiepiscopus Neo-Eboracensis.*

DATUM NEO-EBORACI,

DIE 25 MARTII, 1877.

## Approbations to former Editions.

ARCHBISHOP'S HOUSE, WESTMINSTER, S. W., *Apr.* 7, 1881.

Rev. and dear Father:—I have to thank you for sending me a copy of your work on the "Elements of Ecclesiastical Law." On receiving it, I at once examined certain parts to which my attention has been lately directed, and I found the treatment of them singularly full and precise. The book, therefore, will be, I believe, of much use in Seminaries and to the Clergy. And I will not fail to make it known.

The new Hierarchies and the Churches of the New World are under conditions so totally unlike the old countries in centuries past, that we need a "Novum Jus" by the application of old principles to a new state.

May every blessing prosper your labours.

I remain, Rev. and dear Father, yours faithfully in Xt.,

HENRY E., CARD.-ARCHBISHOP.

*Of Westminster.*

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BIRMINGHAM, March 19, 1881.

DEAR REV. SIR:

On receiving your "Elements of Ecclesiastical Law" I put it into the hands of the Theological Professor of one of our Seminaries. He has read it for me, and, I am glad to say, confirms the *prima facie* judgment I had formed of its utility for ecclesiastical students, as well as of its learning. As I think you will like to see his letter, I inclose it.

Thanking you for the gift of the volume, I am, Rev. Sir,

Your faithful servant in Xt,

JOHN H. CARD. NEWMAN.

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[*Letter of the Theologian appointed by His Eminence, Cardinal Newman, to examine the* ELEMENTS.]

14th March, 1881.

MY LORD CARDINAL:

The "Elements of Ecclesiastical Law," by Dr. Smith, is in my opinion not only a very *interesting*, but also a most *useful* book for Students and Priests here as well as in America. The chief good points of the book I take to be:

I. *The selection of material, i. e.*, the leaving out a great deal of archaic information which one usually meets with in such books, and giving just what is necessary for our times and circumstances.

II. His method, *i. e.*, 1st, *the order* in which he puts the general principles or the old *Common* law of the Church first, and then the special Ecclesiastical law of America, England, or Ireland, makes a good and clear picture of the American Church as part of the old Mother Church and still on the other hand as a new creation of our own times. 2d, the *manner* in which he proposes the matter in questions and answers, is catechetical, and makes things very concise and clear. One sees the author has but one purpose throughout, *i. e.* to be *useful* to his readers.

III. The author constantly refers to the best authorities for his statements and conclusions, and the book has been examined by Cardinal Simeoni's Consultors, whose suggested corrections are embodied in the 3d edition, and it bears the stamp of approbation by many Bishops and is consequently on mere external grounds a very *reliable book.*

IV. What makes the book also very interesting and useful is the many references to the *Schemata Vaticani Concilii*, or proposals made by Bishops to bring about a change, revision of the *Corpus juris*, and he gives many instances.

V. With a few more additions as regards England, the book might be classical for this country; anyhow, there is no book that would better meet our wants at present. I hope it is a little spur for students—as yet there is no such thing as Canon law in our seminaries, and I believe Priests at large do not care for it, or think they can do without it. Any one who reads Dr. Smith

on Vicars General, Parish Priests, Chaplains and Confessors, or also on Bishcps, will find out his mistake.

As Manuals or Handbooks are generally tedious, it is a great thing to say that Dr. Smith's is not tedious. I shall recommend it to our students here as that book which fills up a gap in our theological education, and will be very useful on the mission. I have the honor of remaining

Your Eminence's humble servant,

V. T. SCHOBEL.

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LONDON, ONTARIO, March 3d, 1881.

Rev. and dear Sir:—As your work entitled "Elements of Ecclesiastical Law," has been revised at Rome and approved by many distinguished Prelates, it cannot fail to command general confidence as to its accuracy and trustworthiness. It affords me pleasure to add my Commendation to that given it by so many learned Bishops and Canonists.

Believe me to be, Rev. and dear Sir, yours sincerely,

✝ JOHN WALSH, *Bishop of London.*

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TORONTO, March 5, 1881.

My dear Doctor Smith:—Many thanks for your excellent treatise on the elements of Ecclesiastical law. It is a work which was a long time needed, and yet, it comes in good time. It will be read by many ecclesiastics with much profit, and will save the Bishops a great deal of trouble, as the priests will be more acquainted with the duties and responsibilities of their Bishops, as well as their own. Besides an acquaintance with the forms of procedure, in cases of delinquency, will prevent many mishaps. You have indeed rendered a great service to the Catholic Church in America, and your submitting the work to the Roman Consultors will give it a title to great authority. Receive, my dear Doctor, the expression of my high esteem and consideration.

Yours very faithfully in Xt,

✝ JOHN JOSEPH LYNCH,
*Archbishop of Toronto.*

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ST. JOHN, N. B, March 21st, 1881.

Rev. dear Sir:—I have to thank you for a copy of your work, "Elements of Ecclesiastical Law." It is a useful and valuable work, and having besides the approbation of the Propaganda, must prove an acceptable addition to the ecclesiastical library. I am, dear Sir,

Faithfully yours in Xt,

✝ J. SWEENY,
*Bishop of St. John.*

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LOUVAIN, March 29, 1881.

As regards a recommendation, Rev. and dear Sir, I think the best I can give is to say that I have adopted the book as a text-book for my students.

J. DE NEVE, DOM. PRELATE,
*Rector of the American College*, Louvain.

## APPROBATION OF THE AUTHOR'S ORDINARY.

DIOCESE OF NEWARK,
NEWARK, April 28, 1877.

DEAR DOCTOR:

I have heard with great pleasure that you have finished your work on Canon Law, and that it has obtained the "Imprimatur" of his Eminence Cardinal McCloskey.

The study of the laws of the Church, in which the wisdom of the past is embodied, is always interesting and useful, not to speak of the growing importance attached to such knowledge in our midst. I therefore congratulate you on the good that you have done by compiling a summary of Canon Law, from approved sources, and I sincerely wish you all the success which your zeal and assiduity deserve. I remain, Rev. Dear Doctor,

Very truly, yours in Christ,
† MICHAEL,
*Bishop of Newark.*

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This beautiful volume comes in proper time.

† F. N. BLANCHET,
*Archbishop of Oregon.*

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As the "Elements of Ecclesiastical Law" has the approbation of Cardinal McCloskey and of the Bishop of Newark, I cannot refuse to tender my approbation. † JOHN M. HENNI,
*Archbishop of Milwaukee.*

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The voluminous work of Dr. Smith cannot fail to be useful to many clergymen, those especially who do not possess already similar works. Yet I do not pretend hereby to give a judgment or approbation of all parts of the work: I leave that to more competent persons.

† A. M. BLANCHET,
*Bishop of Nesqually.*

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You are welcome to put my name among the admirers of Dr. Smith's "Elements of Ecclesiastical Law." I would not commit myself to approval of all its positions; but in general I am glad to see such a work, and it seems to be well done. I think, too, in this case, he did well to give it in English. I would rather students should study their Canon Law in Latin. But as there was no such work in the country before, it is well that this answers both for students and for other readers.

† WILLIAM HENRY ELDER,
*Bishop of Natchez.*

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I have carefully looked over the book entitled "Elements of Ecclesiastical Law," and I cannot but regard it as a most useful and timely publication. The numerous references to standard authorities upon almost every question of which it treats make the book especially valuable.

† THOMAS L. GRACE,
*Bishop of St. Paul.*

The "Elements of Ecclesiastical Law," by Dr. Smith, I find to be a learned and useful work. . . . . I hope that this really meritorious and solid work will have a wide circulation. † JOHN J. HOGAN,
*Bishop of St. Joseph.*

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An important and valuable addition to our Catholic literature, and I hope the publishers' enterprise and the reverend author's learned labors will be appreciated by the Catholic public. I sincerely express my own most hearty appreciation and thanks to author and publishers.

† S. V. RYAN,
*Bishop of Buffalo.*

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I have read with pleasure, and I hope with fruit, the work of Dr. Smith on "The Elements of Ecclesiastical Law." I consider it the best *elementary* treatise on the subject I have seen; and enriched with its copious references, directs the student who desires a more extensive course of reading. Dr. Smith has shown in his work extensive, judicious, and conscientious study.

† P. T. O'REILLY,
*Bishop of Springfield.*

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It is indeed a most useful work; clear, plain, and learned. It supplies a great want. † JOSEPH DWENGER,
*Bishop of Fort Wayne.*

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The work is a welcome addition to our libraries, well arranged, interesting in its matter and manner; and so necessary to the student of Theology that it is easy to predict for it the popularity it richly deserves.

† THOMAS F. HENDRICKEN,
*Bishop of Providence.*

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I read Dr. Smith's first book with pleasure, and his work on "Elements of Ecclesiastical Law," published with the approbation of his Ordinary, the Bishop of Newark, and the "Imprimatur" of the Cardinal Archbishop of New York, with even greater satisfaction. † E. P. WADHAMS,
*Bishop of Ogdensburg.*

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I find the book very good, and approve of it quite cneenuily.

† RUPERT SEIDENBUSH, O.S.B.,
*Bishop of St. Cloud.*

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I have been prevented from making such examination of Dr. Smith's "Elements of Ecclesiastical Law" as would make my opinion satisfactory to myself. I can only rejoice with you that the commendations already received render unnecessary to its success the good word. It has already the best wishes of yours sincerely. † JAMES AUG. HEALY,
*Bishop of Portland.*

I am very much pleasea with it. J. TUIGG,
*Bishop of Pittsburgh.*

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An admirable work of its kind. It is a clear, concise, and, I think, an entirely reliable exposition of the principles and leading provisions of those parts of Canon Law of which it treats. It gives evidence of patient and extended research, and of a sound and judicious criticism on the part of its author, and it has, for American readers, the peculiar merit of throwing a great deal of light on many necessarily unsettled canonical questions that have arisen in this country. If I am not mistaken, it will be welcomed as an excellent and much-needed text-book in our seminaries, and will give a fresh impulse to canonical studies among the clergy generally.

Sincerely yours *in Dmo.*,
† J. O'CONNOR,
*Vic. Ap. Neb.*

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REV. DEAR DOCTOR:

Having examined "Elements of Ecclesiastical Law," I am glad to say that it pleases me very much.

It should be one of the chief objects of a writer on Ecclesiastical Law to show what the universal Ecclesiastical Law is, and how far it is applied or applicable to particular nations or countries; especially should he faithfully adhere to the letter and spirit of the decisions of the Holy See. In these respects, you have, so far as I can judge, succeeded very well. While setting forth the principles of the common law of the Church, you have, as far as its applicability to this country is concerned, given due consideration to the peculiar condition of the Church in the United States. *Your work*, therefore, *is very practical, opportune, and useful, both to priests on the mission and to students in seminaries.* The clearness and excellence of its method will render its perusal not only instructive but also agreeable. Hence, while in matters freely controverted among canonists and theologians, I may not always coincide with your views, *I sincerely congratulate you on the excellence of your book and its adaptability to this country.* I trust it will meet with complete success.

Truly yours,
A. KONINGS, C.SS.R.

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The present work is an accurate summary of modern Canon Law in general, and of American statutory regulations in particular. Nearly all available authorities have been made contributory to it, and the result is much like a mosaic, in which the minute pieces of hard substances of various colors are carefully inlaid and harmoniously cemented together with a master's hand. Indeed, this your mosaic will stand the test of ages.

Yours very respectfully,
F. J. PABISCH,
*President of Mount St. Mary's of the West, Cincinnati.*

# PREFACE.

We now venture to publish, though not without great diffidence, our "Elements of Ecclesiastical Law." These pages have been written especially with reference to the discipline of the Church in this country. Hence, throughout the work, the particular laws, customs, and practices of the United States, and of countries similarly circumstanced—as Ireland, England, and Canada—are explained along with the general or common law of the Church. This we have done in order to enable the reader to compare our special discipline with that of the universal Church, and to understand the one better by comparison with the other. A slight perusal of the decrees of the Second Plenary Council of Baltimore will demonstrate that they are based on, and, as far as the condition of this country would permit, modelled after, the common law, especially as set forth by the Council of Trent.

The volume is divided into three parts. The first treats of the nature, division, etc., of ecclesiastical law; of the sources whence it emanates; and of the authorities from which it derives its efficacy. Next, the nature and force of national canon law, especially with reference to the United States, are discussed. The second part discourses, in a general manner, on ecclesiastics as vested with power or jurisdiction in the Church. Hence, it shows what is meant

by ecclesiastical jurisdiction, how it is acquired, how lost and resigned. It therefore treats chiefly of the election of the Sovereign Pontiff, of the creation of cardinals, of the appointment, dismissal, and transfer of bishops, vicars-general, administrators of dioceses, and of pastors, particularly in this country. The third part treats, in particular, of the powers and prerogatives of ecclesiastics as clothed with authority in the Church. Hence, it points out the rights and duties chiefly of the Roman Pontiff, of the Roman Congregations, of cardinals, legates, patriarchs, primates, metropolitans, bishops, vicars-general, administrators of dioceses, pastors, and confessors.

It has been our endeavor to adapt the work to, and hence we frequently quote from, the "Syllabus" of 1864; the "Const. Apostolicae Sedis" of Pope Pius IX., published in 1869, by which the censures "latae sententiae" were limited; the latest decisions of the Roman Congregations, especially those bearing on this country; and, finally, the Vatican Council. Besides quoting, wherever appropriate, the definitions of the Council of the Vatican, we have, in their proper places, in connection with the subject-matter, added various schemes (*schemata*) and proposals (*postulata*) either discussed in or submitted to this Council. The former are drafts of decrees prepared before the assembling of the Council by a special commission, appointed by Pope Pius IX. for that purpose, and consisting of the most distinguished theologians from all parts of Christendom; the latter are motions made in the Council by bishops from different countries. We quote these drafts and proposals, not as though they had the force of dogmas or laws, but to show what laws would likely have been, or will be (if the Council reassembles), enacted by the Council of the Vatican. For both the schemes and proposals we are indebted

to the excellent work of Rt. Rev. Dr. Martin Bishop of Paderborn, entitled "Documenta Concilii Vaticani."

The method observed in the present volume is that of Craisson in his celebrated "Manuale Totius Juris Canonici," Pictavii, 1872, ed. 3a—a work which was approved at Rome and honored by a congratulatory letter from the Holy Father. It seems scarcely necessary to state the motives that induced us to make use of the English language in the publication of a book like this. Many, if not most, of the recent works on canon law are written, not in Latin, but in the vernacular of the writer. Besides, it was thought that numerous technical and, so to say, traditional phrases so peculiar to works of this kind written in Latin might be difficult of understanding, especially in a country like ours, where ecclesiastical law has not as yet come to be universally studied.

To cause the book to be received with greater confidence, and to make sure that it contained nothing contrary to faith, good morals, and the common opinion of canonists, we cheerfully submitted it to our ecclesiastical superiors. Upon the report of the theologian appointed to examine the work the "Imprimatur" which adorns the front page was graciously granted by his Eminence the Cardinal Archbishop of New York.

The work, though of itself complete, does not embrace the entire ecclesiastical law. We shall, please God, supplement it, at an early day, by two more volumes, which, together with the present one, will form a complete text-book of canon law as adapted to the discipline of the Church in the United States. An appendix is added, containing the "C. Ap. Sedis," the "Instructio" of the Propaganda regarding public schools in the United States recently sent to our bishops, the profession of faith as amended by Pope Pius

IX., and the much-discussed decision of the Holy See as to when persons excused from the precept of fast by age or labor may be permitted to eat meat "toties quoties." We humbly and unreservedly submit the work to the judgment of the Sovereign Pontiff.

S. B. S.

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# PREFACE TO THE SECOND EDITION.

We call attention to the principal alterations and additions made in the present edition. For the sake of greater clearness various Latin passages, that seemed obscure as they stood, have been translated into English. Besides other changes and additions, extracts from the laws of the United States concerning matters under discussion have been added. Again, since the publication of the first edition, the decrees of the Plenary or National Synod of the Bishops of Ireland, held in Maynooth in 1875, have been published. This necessitated several important changes. Finally, a number of supplementary notes have been added regarding the mode of quoting from the *Corpus juris*, the Vatican Council, appeals, sentences *ex informata conscientia*, etc., etc. We take this opportunity to respectfully express our very sincere thanks for the kind letters of approval received from a number of prelates. We also beg to acknowledge the very valuable assistance so cordially extended to us by several eminent theologians in the preparation both of the first and second editions of the present work. Finally, we gratefully appreciate the liberal patronage bestowed upon the work.

S. B. S.

January 1, 1878.

# PREFACE TO THE THIRD EDITION,

## REVISED AT ROME.

IN presenting this third edition to the Reverend Clergy and to Seminaries it seems proper that we should say something in relation to the examination to which the "Elements" was submitted in Rome. The attacks made upon the work from various quarters, as well as a desire to ascertain and conform to the views entertained in Rome with regard to certain questions, caused us to send a copy of the "Elements" to His Eminence Cardinal Simeoni, Prefect of the Propaganda, with the request that it be thoroughly examined. His Eminence was graciously pleased to accede to our petition, and accordingly appointed two Consultors, doctors in canon law, to examine the "Elements" and report to him. The Consultors, after examining the book for several months, made each a lengthy report to the Cardinal-Prefect, who kindly transmitted both reports to us with a recommendation that the suggestions of the Consultors be taken into consideration in our next edition. That we have scrupulously conformed to His Eminence's recommendation will be seen from the corrections made in numbers 6, 21–35, 189, 190, 191, 196, 203, 337, 338, 455, 460, 482, 483, 503, 504, 505, 535, 536, 659, and on page 433.

One of the reports is written in Latin, the other in Italian. The former gives the result of the Consultor's examination

of the book itself; the latter deals with the criticisms made upon it in several articles of the *Catholic Universe* of Cleveland, O.* Both documents, together with a translation of the Italian, follow on the succeeding pages.

While we do not pretend to construe these documents into a positive approbation of our work by the Sacred Congregation of the Propaganda or its illustrious Cardinal-Prefect, no one will deny that the examination and report of the Roman Consultors constitute a strong guarantee of the correctness of our work and its conformity to sound ecclesiastical jurisprudence.

Other changes of considerable interest and no little importance have been made in the present edition, chiefly in regard to the status of Missionary Rectors and parishes in this country, especially as determined by the instruction of the Propaganda dated July 28, 1878, establishing Commissions of Investigation with us, as will be seen by a reference to numbers 256, 259, 260, 261, 266, 294, 395, 407, 412, 417, 418, 419, 420, 443, 645, 648.

In conclusion, we beg to apologize for the delay in the publication of the second volume of the "Elements." We hope to be able to complete it in a year from now.

S. B. S.

ST. JOSEPH'S CHURCH, PATERSON, N. J.,
Feast of the Immaculate Conception, 1880.

* These articles were afterwards published in pamphlet form under the title "Points in Canon Law," by Rev. P. F. Quigley, D.D. Our reply is entitled "Counter-Points in Canon Law."

# PREFACE TO THE SIXTH EDITION.

SINCE the last (fifth) edition of this volume was published, a very important event has taken place. We allude to the holding of the *Third Plenary Council of Baltimore*, in 1884. This Council marks a new era in the history of the Church in the United States. It is owing to the celebration of this Council that, although the last edition of this volume has been exhausted for some time past, we have delayed the new edition till after the publication of the *Third Plenary Council*, so that we might be able to embody in it the new decrees.

The Second Plenary Council of Baltimore expresses, in a number of places, the desire to introduce as soon as possible the general discipline of the Church also here. This desire has been, in a measure, fulfilled by the Third Plenary Council of Baltimore. The legislation of this Council is framed on the lines drawn by the sacred canons. The missionary condition of the Church with us has, to a great extent, passed away, except, perhaps, in the far West and extreme South. Consequently the peculiar and exceptional laws which obtained formerly and which were adapted to our missionary status have also, in a measure, passed away, and given place to laws which, if not altogether identical with, are nevertheless similar to and approximative of the laws that govern the entire Church. The first great and decisive step in the direction of the general law has been taken. The second and perhaps last step will be made in

the next Plenary Council. All great, important, and radical changes are, as a rule, brought about gradually, not of a sudden. Under the wise legislation of the *Third Plenary Council*, the Church of this country will expand and flourish more wonderfully than ever. Hence, when the next National Council meets, it will find itself enabled to perfect and crown the work so well begun by its predecessor.

The decrees of the *Third Plenary Council*, especially those relating to the election of bishops, to diocesan consultors, the irremovability of rectors, the appointment of irremovable rectors by competitive examinations, diocesan examiners, the admission into a diocese, the *exeat*, regulars, the management of seminaries, the form of trial in criminal and disciplinary causes of ecclesiastics, derive a special weight and significance from the fact that they were proposed by the Holy See itself, in the Conferences held at Rome in November, 1883, between the cardinals of the S. C. de P. F. and our prelates. In these Conferences the framework of the legislation of the *Third Plenary Council* was drawn up. This framework formed the basis of the Council's deliberations, and was, with some modifications, adopted and filled up.

The present volume has been *thoroughly revised in accordance with the new decrees of the Third Plenary Council of Baltimore.* The main alterations rendered necessary by the new decrees refer to the new mode of electing bishops, to the new irremovable rectors, their appointment by *concursus*, and their dismissal for canonical cause; to the present status of the other rectors, who are not irremovable, the admission into a diocese, and rights and duties of deputies for the management of seminaries. All these questions are accurately explained. To facilitate references, the principal places where these questions are treated are marked with an index-hand.

We have also added, at the end of the book, *an entirely new treatise*, of great practical importance, on the *new dioce-*

*san consultors* as established by the *Third Plenary Council of Baltimore.*

It will be seen from the front page that this work was first published with the *imprimatur* of the late Cardinal McCloskey. As the present (sixth) edition has been completely revised and contains many very important changes in accordance with the new legislation of the *Third Plenary Council of Baltimore,* we have submitted it to His Grace the present Archbishop of New York, in whose archdiocese it is published. Upon the report made by the Very Rev. Dr. Gabriels, President of St. Joseph's Provincial Seminary, Troy, N. Y.,—the censor appointed for this work,—the *imprimatur* was given by the Most Rev. Archbishop.

We also feel greatly honored by the *Imprimatur* of His Grace the Most Rev. Archbishop of Cincinnati, and we gratefully acknowledge the cordial benevolence and gracious kindness with which it was granted.

In a few months we expect to publish the new edition of the *second* volume of this work. It will be completely revised, in accordance with the new form of trial laid down in the last Instruction of the S. C. de P. F. *Cum Magnopere* of 1884. Besides, we intend to issue, simultaneously with the second volume, a special and separate treatise on this new form of trial. The third and last volume of these "Elements" will be given to the public a short time afterwards.

PATERSON, N. J., Feb. 20, 1887.

# PREFACE TO THE SEVENTH EDITION.

THE unusual favor with which this work has been received both here and abroad has stimulated us to make it still more worthy of this patronage. In the present edition we have made additions and alterations which will make the volume even more accurate and reliable than the former editions. A number of printer's mistakes, which were overlooked in the previous editions, have been corrected in this edition. Among other important matters, we have added an interesting outline of the manner in which our consultors and irremovable rectors proceed in electing bishops, as set forth in the *Third Plenary Council of Baltimore*, and we show wherein our procedure agrees with or differs from that laid down by the general law of the Church.

May 12, 1889.

# PREFACE TO THE EIGHTH EDITION.

IN this new edition we have entirely rewritten the article on the *publication of ecclesiastical laws*, especially Papal, embodying in our new article the teaching of the most recent approved canonists. The chapter on *ecclesiastical customs* has been in great part remodelled and improved. We have also made considerable changes in the chapter treating of the *division of parishes*, and of missionary quasi-parishes with us, in Ireland, England, Scotland, and other countries

similarly circumstanced. The article on *Papal Consistories* has also been completely rewritten, and we have added important explanations on the manner in which the Sovereign Pontiffs expedite the business of the Catholic world. These new features, we hope, will render the present edition even more useful than the former ones.

PATERSON, March 19, 1891.

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# PREFACE TO THE NINTH EDITION.

SINCE the last edition of this work was published, a most important event has taken place in this country. We allude to the *establishment of the Apostolic Delegation*, in our midst, by our present great Pontiff, Leo XIII. Hence we have thought it opportune to set forth, in this new edition, on page 297 sq., at some length, and with as much accuracy as possible, the *origin* and *history* of *Apostolic Delegations;* their *various kinds;* their *powers* and *prerogatives*, whether by virtue of their general or special commissions, especially at the present day; their *support* or *maintenance;* the *recall*, *resignation*, etc., of the Apostolic Delegates, Auditors, and Secretaries; the office of the *auditor* and of the *secretary* of the Apostolic Delegation.

We have also added, on page 231, a very important recent decision of the S. C. de Prop. Fide, in regard to *ecclesiastics assigning to laics pecuniary claims against other ecclesiastics*, for the purpose of bringing suit in the secular court for the recovery of the claim.

Besides, on page 284, we have more accurately defined the *powers of the College of Cardinals during the vacancy of the Papal chair.*

Again, on page 288, we have completely rewritten the article on the *Roman tribunals*, particularly the Apostolic *Penitentiary*, *Datary*, *Chancery*, and *Secretariate of Briefs*.

Finally, we have added in the Appendix the Brief of Pope Leo XIII. establishing the Apostolic Delegation in this country.

These changes and corrections, we trust, will make this new edition even more interesting than the former ones.

S. B. Smith.

Paterson, May 2, 1893.

LETTER OF HIS EMINENCE CARDINAL SIMEONI, PREFECT OF THE S. C. DE PROP. FIDE, ROME, ENCLOSING THE REPORTS OF THE ROMAN CONSULTORS WHICH FOLLOW.

N. 1. RENDE DOMINE.

Hisce adnexum ad Te transmitto folium nonnullarum animadversionum, quas viri juris ecclesiastici periti meo rogatu fecerunt in Librum a Te editum cui titulus "Elements of Ecclesiastical Law." Bonum esset et satis ut videtur opportunum, ut de iis rationem in nova ejusdem operis editione habeas.

Interæ precor Deum ut Tibi bona quaeque largiatur.

Romae ex aedibus S. Congnis de Propda Fide, die 21 Aprilis, 1879.

D. T.

*Addictus.*

JOANNES CARD. SIMEONI, *Praefectus.*

REVO. S. B. SMITH. D.D.

J. B. AGNOZZI, *Secret.*

# REPORT AND ANIMADVERSIONS

*Of the two Roman Consultors appointed by His Eminence Cardinal Simeoni, Prefect of the Propaganda, to examine the "Elements."*

## I.

### ANIMADVERSIONES

**IN LIBRUM CUI TITULUS "ELEMENTS OF ECCLESIASTICAL LAW," BY REV. DR. SMITH.**

De merito plane insigni cl. Auctoris tam multa legi possunt testimonia in fronte operis, ut siquid illis addere aut demere vellem, temeritatis notam non effugerem. Quod si spiritum ejusdem Auctoris cognoscere cupimus, praeter alia multa, sufficit inspicere ea quae passim disputat de auctoritate Romani Pontificis tum in genere, tum nominatim in materia concordatorum (n. 105, pag. 51 sq.) ubi eidem Romano Pontifici veram, propriam et effectivam derogandi potestatem asserit, quam quidem recentiores immerito ei abjudicant. Huc etiam pertinent quae idem auctor libere praedicat de Dominio Temporali (n. 484, pag. 230), etc. Occurrunt tamen nonnulli loquendi modi, qui non omnibus aeque placere possunt: quos proinde (ut Superiorum desiderio satisfaciam) infra excribam, adjectis cum opus fuerit, brevissimis animadversionibus.

I. (N 189 p. 82.) "Hierarchia ecclesiastica ratione potestatis clericis collatae, dividitur in hierarchiam *Magisterii*, hierarchiam *jurisdictionis* et hierarchiam *ordinis*; siquidem ecclesiastica potestas complectitur: 1°, potestatem docendi; 2°, gubernandi; 3°, obeundi sacras functiones, idest exercendi potestatem ordinis Quia vero hierarchia magisterii *virtualiter* (sic) continetur in hierarchia jurisdictionis, canonistae plerique omnes unice distinguunt hierarchiam ordinis et jurisdictionis."

(N. 191, p. 84.) "Ex hac parte quidam scriptores peccant excessu, dum affirmant potestatem jurisdictionis *essentialiter* differre a potestate ordinis; quidam autem defectu, asserentes ejusmodi potestates ne accidentaliter quidem inter se distingui aut separari posse."

"Accurata rei notio haec esse videtur: hierarchiam ecclesiae essentialiter unam esse; hierarchiam vero aut potestatem ordinis et jurisdictionis inter se differre tantum in eo, quod sint formae aut modi (sic) unius ejusdemque hierarchiae. Dum itaque binae potestates essentialiter disjunctae, separatae aut distinctae non sunt, nihilominus separabiles sunt, adeoque saltem, accidentaliter ab invicem distinguuntur."

(N. 176, p. 87.) "Distinctio ordinis et jurisdictionis a *scholasticis* haec assignatur, quod potestas ordinis respicit corpus Christi reale in SS. Eucharistia, potestas jurisdictionis corpus mysticum—i. e., fideles. Quae distinctio

licet quoad substantiam legitima (though correct in the main), nimium urgen non debet, ac si radica em differentiam utriusque potestatis innueret."

"Nam quemadmodum in SS. Trinitate adsunt *tres personae* et *una* tantum substantia; ita tres dantur rami seu species hierarchiarum, idest potestas magisterii, potestas ordinis et potestas jurisdictionis; et nihilominus nonnisi una datur *centralis potestas* (sic) seu hierarchia. Igitur hujusmodi potestates *accidentaliter* quidem, (sic) non radicaliter aut fundamentaliter ab invicem distinguuntur." Cf. etiam, si placet n. 536, p. 272, ubi triplicem hanc distinctionem ad episcopalem potestatem translatam videas.

In his omnibus (quae a recentiori quodam scriptore eoque *laico* desumpta sunt) Auctor non obscure recedit a communi usu atque auctoritate *canonistarum* et *scholasticorum*. Quae res, praeter alia incommoda, non parum implicat atque enervat demonstrationem catholicam de primatu jurisdictionis Petro collato, ut videre est apud eumdem D. Smith, n. 460, pag. 204 seq. Cf. Tarquini, *Instit.* i., 4, in nota.

Attamen haec eadem facile reduci possunt ad communem doctrinam, si cautiorem loquendi modum adhibemus, qualem habet prae caeteris Valentia, De Fide, disput. i, qu 1°, punct. 7, § 25, pag. 234 ibi: "Eminet et Ecclesiae ordo maxime in differentia atque varietate vitae, statuum et officiorum seu administrationum quae in illa continentur," . . . Eoque refert Valentia Dionysium Areopagitum, qui actus hierarchiae tripartite dividit in lib. de *Ecclesiastica Hierarchia* c. 5 et 6. Docet namque ad Ecclesiasticum Ministerium tria pertinere, nempe *purgare*, *illuminare* et *perficere*. Et quae sequuntur plane opportunissima. Cf. eod. loc. § 30, ubi idem Valentia primatum Petri probat ex Jo. xxi.*

II. (N. 202, pag. 89.) "Ecclesia infligere potest saltem leves corporales punitiones, ut reclusio in monasterium, incarceratio et similes, *non tamen poenam mortis*."

Quod ultimum asserendum non esset, sine limitatione aut declaratione de qua Tarquini, i, n. 47, p. 48, i) ad 7am.†

III. (N. 455, pag. 199.) "In re mere temporali et civili dubitari nequit quin ab ecclesiastico tribunali ad civile licite *appel etur*" (sic).

Assertio redditur valde difficilis, nisi forte addatur hypothesis, quam subobscure innuit Phillips in loco heic citato ab Auctore: nempe quod judex ecclesiasticus ex quadam constitutione locali habeat etiam tribunal quoddam mere civile.‡

IV. (N. 483, p. 229.) "Meminisse debemus depositiones principum fuisse quidem actus Pontificis, non vero infallibiles definitiones, *quas Catholicus tanquam definitiones de fide acceptare debet.*"

Quasi vero ab auctoritate Pontificis nonnisi definitiones fidei, *Catholicus acceptare teneatur.*§

V. Quod vero ibidem additur "mundum, Catholicum quin etiam christianum esse desiisse," explicari debet ex iis quae Auctor praemiserat (in

* See corrections under n. 189, 191, 196.
† See corrections under n. 203, 204.
‡ See correction under n. 455.
§ See correction under n. 483.

n...ed. n. 482, p 227). quae tamen licet a quibusdam recentioribus fidentius praedicuntur, minus vera sunt. Nam etsi mundus non sit amplius catholicus et christianus, secundum regimen sociale *laicum*, attamen formaliter catholicus et christianus est secundum regimen sociale ecclesiasticum, nihilque prohibet quominus Papa, ut antea, benedicere possit, nedum singulis fidelibus *distributive*, sed etiam *Urbi* et *Orbi* collective. Ceterum illa assertio eo vel magis miranda est in homine qui nostris hisce temporibus tam serio recolit exclusivam principum in Conclavi! (n. 337, p. 141).*

VI (N. 32, pag. 22) "Sententia tenens quasdam leges Pontificias ad disciplinam spectantes, de facto non obligare antequam acceptentur, (sic) modo hoc tribuatur liberae voluntati Pontificis, licita est, et sustinetur a multis doctoribus Catholicis."

Propositio desumpta est ex Bouix, de *Principiis*, P. ii., sect. 2, cap. 5, § 1, p. 219. Sed revera auctores qui pro ea allegantur, vel ad rem non faciunt, vel etiam affirmant contrarium, ut egregie ostendit P. Sanguineti. Et certe cautius et concinnius loquendum esset, cujus rei specimen proferri potest ex Zallin. tit. de Constit., § 170. Dico igitur potest, si lex pontificia generalis Romae promulgata in provinciis *non promulgetur*, subditus ab ejusdem observatione regulariter *excusari*, ex praesumpta voluntate Summi Pontificis *non urgentis* observationem in provinciis. Haec praesumptio fundatur in jure (§ 125), et quia episcopi non pro meris executoribus pontificiarum legum, sed pro veris pastoribus, debita potestate praeditis habendi sunt, a quibus Deus de commissis a Se ovibus rationem exiget. Et § 124: "Si istiusmodi leges (quae ad disciplinam spectant) in diocesi non *promulgentur*, *praesumi potest Pontificem nolle obligare diocesanos*, vel ipsum potius Ordinarium de difficultate leges hoc loco promulgandae aut observandae cum Sede Apostolica egisse aut agere, ut propterea ejus obligatio interea suspensa maneat."

Et juxta ejusmodi observationem corrigenda [illegible] ent tum ea quae idem Dr. Smith subjicit in cit. n. 32 et seq., tum ea quae praemiserat n. 26 (pag. 19) magis universaliter quam Bouix.†

VII. (N. 4, p. 10.) Jus *canonicum* publicum describitur quod sit: "Legum systema quibus Ecclesiae Constitutio definitur."

Observo Emum Tarquini a quo desumpta est haec definitio (cit. *Instit.* i., n. 3) non dividere jus *canonicum* in publicum et privatum, sed jus *ecclesiasticum* in publicum (ut supra) et privatum seu *canonicum* proprie dictum (Tarquini, n. 4, p. 3).‡

## II.

### EMINENZA RMA.

Ho esaminato secondo li venerati ordini di Vostra Eminenza il capo *de juribus et officio parochorum* degli Elementi di Dritto Ecclesiastico del Rudo Dr. Smith, opera publicata in Nuova York coll approvazione del Vescovo di Newark, a cui è soggetto l'Autore, e del Card. Arcivescovo di Nuova York; ed

* See corrections under n. 482, 483, and 337. † See corrections under n. 27–28.
‡ See correction under n. 4.

ho esaminato secondo l' istesso incarico avuto la critica che di quel capo è stata fatta in sei lettere publicate in un giornale, alcune colla firma del Rndo Dr. Quigley, altre colle iniziale T. M. Ed avvegnachè siano da rilevare parecchie inesattezze e pur qualche erronea sentenza (e certo non facile, scrivendo libri di tal genere, schivar sempre ogni errore) debbo pur dichiarare secondo il mio debole parere che quest' opera del Rndo Dr Smith è di gran merito e scritta con ispirito eccellente e veramente romano. Per il che merita l'Autore ogni encomio, sendo egli certo uno de' primi che io mi sappia che abbia con gran lena e diligenza intrapreso a scrivere un' opera di dritto canonico nelle parti dell' America del Nord, essendo assai difficile di applicare, estendere e restringere i principi generali per quei luoghi, come per tutte l'altre Missioni che sono ancor fuori per molti capi del dritto comune. Se ho qualche dispiacere di quest' opera, si è che sia scritta in lingua inglese, e che un opera del tutto ecclesiastica e massimamente indirizzata agli ecclesiastici, non sia scritta piu tosto nella lingua della chiesa. Or vengo senza piu a discutere il merito della critica e censura fatta al libro dell' autore. Or questa censura e critica è intera a dimostrare che l'Autore per due capi troppo o manco attribuisce all' autorita de' Parrochi in America. Si noti che là Parrochi propriamente non sono, ma Rettori di chiese e di Missioni. L'Autore li chiama *Pastori* attenendosi all' uso di molti, ma un tal nome sendo comune a' protestanti e comunemente attribuito a loro pseudo-ministri del culto, non dovrebbe certo aver luogo nel linguaggio preciso d'un canonista cattolica. Ma la è questa questione di nomi ; veniamo alle cose.

La prima critica che si fa all' A. (Lettera prima firmata T. M.) si è ch' egli ritenga non esser confermati dalla S. Sede gli atti del secondo Concilio plenario di Baltimora. Tutto cio mi pare che abbia tutte le ragioni l'Autore, e nessun fondamento la critica. Imperochè Vostra Eminenza sa benissimo che la S Sede non è solita generalmente confermare verun concilio nazionale o provinciale, ma soltanto riconoscere gli atti, e prescrivere, se è d'uopo, certe correzioni. Nondimeno in quei luoghi o nelle missioni, che come ho detto, son fuori del dritto comune, sendovi bisogno d'un dritto qualunque, l'a la S. Sede confermati parecchie volti, e cosi confermo i quattro provinciali d'Inghilterra, il primo plenario d'Irlanda, e il primo plenario di Baltimora. Ma il secondo plenario di Baltimora, come gia il secondo parimente plenario d'Irlanda non venne confermato dalla S. Sede, ma fatte le opportune correzioni da questa S. Congregazione, fu semplicemente riconosciuto e ordinato che si publicasse Pertanto si ha il decreto, allora emanato da questa S. Congregazione di Propaganda, e sottoscritto da Vostra Eminenza Rma, allora Segretario ; *Decretum* dico, *recognitionis*, non gia *approbationis*, ect. Il critico ignora questa distinzione, o confonde insieme due cosi affatto distinte, che sono la ricognizione e l'approvazione.

La seconda censura che si fa al libro dell' Autore (Lettera seconda firmata T. M.) colpisce una sua dottrina o sentenza cosi formulata : La guirisdizione delegata puo rivocarsi senza una causa. Ma i Pastori son delegati e non veramente Parrochi ; e dunque ponno rivocarsi senza una causa. Questa conclusione non ammette il censore, e la reputa offensiva ai dritti di quali Parrochi o Rettori delle chiese. Ma anche qui il critico o censore confonde una cosa coll' altra, o veramente ignora una distinzione ch' è necessario fare. L'Autore parla di validità d'una tal rivoca, ed ha ragione. Imperocche se i quasi Parrochi non son parrochi propriamente, e dunque son sempre amovibili dal Vescovo, anche senza una giusta ragione. In tal caso agira il Vescovo ingiustamente, ma non sara senza effetto il suo atto di revoca. E che il nostro A. ritenga certo illecito una tal revoca, abbenche non invalida, si par chiaro da cio ch' è porta altrore (pag 179) il decreto *Monemus* del secondo Concilio plenario di Baltimora, ove viene anche ordinato che i quasi parrochi si debbono rivocare previo processo, e che il rivocato abbia facolta di ricorrere al superiore

La terza critica (Lettera terza firmata Rndo Dr. Quigley) al contrario della precedente va a ferire il nostro Autore per manco attribuire all' autorita de'

Vescovi sulla stessa questione della revoca de' quasi Parrochi. L'Autore a pag. 381 propone la questione, Come ponno esser rimossi i Pastori *ratione criminis?* E risponde che non ponno esser rimossi senza un giudizio regulare del Vescovo e di due preti assunti a questo officio. In conferma di tale risoluzione cita il Decreto 77 del secondo Concilio plenario di Baltimora. Il critico rileva contra il nostro A. ch' ei deroghi all autorita del Vescovo, supponendo che non possa parimente il Vescovo sospendere il parroco *ex informata conscientia.*

Ma questa deduzione è affatto insussistente. Si legga a mo d'esempio il citato Decreto N. 77 del Concilio di Baltimora, e si vè chiaro che qui non si parla affatto di tale sospensione *ex informata conscientia.* Potrebbe percio dedurre il nostro critico che la si excluda parimente in questo Decreto? Che il detto Concilio abbia rigettato una regola di disciplina cosi rilevante, sancita dal sacro Concilio di Trento? Non gia. La regola dunque sarà ancor questa che in caso di sospensione *ex informata conscientia,* se il sospeso si grava, possa ricorrere alla S. Sede, ma non appellare.

La quarta critica dell' istesso è a cio che deduce l'Autore a pag. 110 e 111. E domanda se colla sola autorità del Vescovo le parrocchie di cui sono i pastori amovibili *ad nutum* ponno convertirsi in parrocchie di cui non sono amovibili i titolari. e vice versa. Risponde chè de jure communi cio si puo far solo coll' autorità della S. Sede richiamandosi al decreto del Concilio di Baltimora. Qui si noti chè l'Autore non esclude che il Vescovo possa formare nuova parrochia, anzi a pag. 109 lo ammette espressamente. Il critico confonde una cosa coll' altra.

La quinta critica dell' istesso risguarda il valore de' decreti dell' Indice, che l'Autore discute se valga in quelle parti; in cio la critica è fondata e l'A. si scosta alquanto dall insegnamento romano.

Dapo aver scritto le premesse osservazioni, rilevo da una rivista di America, che gia s'a fatta, e s'a ricevuta con gran plauso una nuova edizione di quest' opera. Si potrebbe dunque suggerire che per un altra edizione che forse non si fara aspettar molto, si corregga l'insegnamento dell' A. rispetto a decreti dell' Indice *

Ma vi è un errore ancor piu notabile da corregere. E' dichiara p. 391. che il Decreto *Tametsi* del Concilio di Trento sull' impedimento di Clandestinità, non obligà i protestanti, nè la parte Cattolica che contrae con un protestante. Questo è errore certamente notabile e da emendare in una nuova edizione.†

## TRANSLATION OF THE CONSULTOR'S REPORT WRITTEN IN ITALIAN.

Most Rev. Eminence: In accordance with the venerated commands of Your Eminence, I have examined the chapter *de juribus et officio parochorum* of the "Elements of Ecclesiastical Law," by the Rev. Dr. Smith, a work published in New York, with the approbation of the Bishop of Newark, to whom the author is subject, and of the Cardinal-Archbishop of New York. In accordance with the same commands I have, moreover, examined the criticism which has been made on this chapter in six letters or communications published in a certain newspaper, some under the signature of the Rev. Dr. Quigley, others under the initials T. M. Though the book may contain some inaccuracies and even erroneous opinions (and certainly it is not an easy matter, in writing books of this kind, to entirely avoid errors), yet I must declare that, in my humble opinion, *the work of the Rev. Dr. Smith is possessed of great merit, and written in an excellent and truly Roman spirit.*‡ Hence the author is

* See correction under n. 503 sq. † See correction under n. 391 and on page 433.

‡ The italics are ours.

worthy of all praise, being certainly, as far as I know, one of the first who has, with no ordinary labor and assiduity, undertaken to write a work on Canon Law for the United States, as it is a very difficult matter to apply, extend, and restrict the general principles of ecclesiastical law as well in those parts [the United States] as in all missionary countries, which in many respects are not under the general law of the Church. If I have any fault to find with this work, it is that it is written in English, and that a work altogether ecclesiastical in character, and intended chiefly for ecclesiastics, should not be written rather in the language of the Church.

I now proceed without delay to discuss the merits of the criticism or censure made upon the author's book. This criticism or censure is wholly directed to showing that the author, in two ways, attributes either too much or too little to the authority of parish priests in America. Observe that in the United States there are no parish priests proper, but only rectors of churches and of missions. The author, in accordance with the usage of many, calls them *pastors*. But this name, being common among Protestants, and generally applied to their pseudo-ministers of worship, should certainly not find a place in the concise language of a Catholic canonist. However, this is a question of names; let us come to things.

The first criticism which is made against the author (first letter, signed T. M.) is that he holds that the acts of the Second Plenary Council of Baltimore are not confirmed by the Holy See. Now, it seems to me that in this question the author is perfectly correct, and that the criticism has no foundation whatever For Your Eminence is fully aware that the Holy See is not accustomed as a rule to confirm any council, national or provincial, but that it simply revises or recognizes the acts, and prescribes, if need be, certain corrections. Nevertheless in those countries or in missions where, as I have said, the common law of the Church does not obtain, there being need of some law, the Holy See has sometimes confirmed those councils. Thus it confirmed the four Provincial Councils of England, the First Plenary Council of Ireland [Synod of Thurles], and the First Plenary Council of Baltimore But the Second Plenary Council of Baltimore, as also the Second Plenary Council of Ireland [Synod of Maynooth], was not confirmed by the Holy See, but simply revised or recognized and ordered to be published after the opportune corrections had been made by this Sacred Congregation. Hence also the decree that was issued at the time by this Sacred Congregation of the Propaganda and signed by Your Most Rev. Eminence, then secretary, was a *decretum recognitionis*, not *approbationis*, etc. The critic is ignorant of this distinction, and confounds two things altogether distinct—namely, revision (or recognition) and approbation.

The second criticism made upon the author's book (second letter, signed T. M.) is against a doctrine or opinion of his thus formulated: Delegated jurisdiction can be revoked without a cause. Now, pastors [in the United States] are delegates and not parish priests in the proper sense. Hence they can be recalled without cause. The critic does not admit this conclusion, and considers it injurious to the rights of the parish priests or rectors of churches in

those parts.* But herein also the critic or censor confounds one thing with another, or rather is ignorant of a distinction which it is necessary to make. The author speaks of the validity of such a removal, and he is right. For if those parish priests are not parish priests proper they can always be removed by the bishop, even without a just cause. In such a case the bishop would act unjustly, but his action in removing the pastor would not be without effect. That our author holds that such a removal would certainly be illicit, though not invalid, is clear from what is said in the decree *Monemus* [No. 125] of the Second Plenary Council of Baltimore, as cited by the author (p. 179), which council [as quoted by the author], moreover, ordains that the quasi-parish-priests [of the United States] should not be removed, save upon previous trial, and that the person removed has the right to have recourse to the superior.

The third criticism (third letter, signed Rev. Dr. Quigley), contrary to the preceding one, is made against our author for attributing too little to the authority of bishops on the same question of the removal of quasi-parish-priests. The author, on page 381, proposes the question: How can pastors be removed *ratione criminis?* He answers that they cannot be removed without a regular trial by the bishop and two priests appointed to that effect. In proof of this answer he quotes the Decree 77 of the Second Plenary Council of Baltimore. Here the critic objects against our author that he derogates from the authority of the bishop, as it would follow from his teaching that in like manner the bishop cannot even suspend parish priests *ex informata conscientia.*

But this inference [of the critic] is destitute of any foundation whatever. Let any one read, for example, the Decree 77 above cited of the Second Plenary Council of Baltimore, and he will clearly perceive that it makes no mention whatever of suspensions *ex informata conscientia.* Could our critic, on that account, infer that this decree likewise repudiates such suspensions? that the above council has rejected so important a disciplinary measure, sanctioned by the Council of Trent? By no means. The rule, therefore, is, that in case of suspension *ex informata conscientia,* where the person suspended feels himself aggrieved, he can have recourse to the Holy See, but not appeal.

The fourth criticism from the same source is against the teaching of the author on pages 110 and 111. There the latter asks whether, by the sole authority of the bishop, parishes whose pastors are removable *ad nutum* can be changed into parishes whose titulars are not removable, and vice versa. He answers that, *de jure communi*, this can be done only by authority of the Holy See, and, in proof of this, points to the Second Plenary Council of Baltimore. Observe that the author does not deny that the bishop can form new parishes; on the contrary, on page 109 he expressly admits this. The critic confounds one thing with another.

* That the Consultor's exposition of our doctrine is correct will be clearly seen from our "Elements," No. 419, etc. When, therefore, the critic attacked our views on the removal of our rectors, by placing upon the word "invalid" a construction which, as we show in our "Counter-Points," was never dreamt of by us, he evidently gave the Consultor just cause for attributing to him the above views. If the critic's position was perhaps somewhat misunderstood by the Consultor, he has nobody to blame but himself.

The fifth criticism of the same critic has reference to the force of the decrees of the Index, whose binding force in the United States is questioned by the author. On this head the criticism has a foundation, and the author deviates somewhat from the Roman teaching.

After having written the foregoing observations I learn from an American review that a new edition of this work has already been published and received with great favor. It might, therefore, be suggested that in a future edition, which perhaps will soon appear, the teaching of the author concerning the decrees of the Index be corrected.

But there is another and more serious error which should be corrected. He [the author] teaches on page 391 that the decree *Tametsi* of the Council of Trent, on the impediment of clandestinity, does not bind Protestants, nor a Catholic contracting with a Protestant.* This is certainly a notable error, and should be corrected in a new edition.

* We meant that this was the case where the Declaration of Benedict XIV. obtained. But we evidently did not express this clearly, and thus gave the Consultor just cause for attributing to us the above erroneous opinion.

# BOOK I.

## ON ECCLESIASTICAL PERSONS.

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# PART I.

## ON THE PRINCIPLES OF CANON LAW.

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# CHAPTER I.

## ON THE NAME, DEFINITION, AND DIVISION OF CANON LAW.

### ARTICLE I.

*Various meanings of the term Jus.*

1. The word Jus in general signifies: 1, that which is just and equitable or in harmony with the natural, divine, and human law;[1] 2, the right of doing or omitting something, as also of obliging another person to give, perform, or omit something;[2] 3, the science of law, or jurisprudence; 4, finally, it means the laws themselves, or the body of laws; thus we say, "Corpus[3] juris canonici"—*i.e.*, the body of ecclesiastical laws;[4] Corpus juris civilis—*i.e.*, the body of the civil or Roman law. In this latter sense chiefly we shall use the word Jus in this book.

### ART. II.

*Division of Law (Juris in varias suas species, distributio).*

2. Law (jus) is divided, 1, into natural (jus naturale) and positive. The *jus naturale*, according to Bouix,[5] constat iis

[1] Bouix, De Princip. Jur. Can., p. 5. Paris, editio secunda.

[2] Craisson, Man., n. 2. Pictavii. 1872.

[3] Bouix, l. c.

[4] Cf. Salzano, Lezioni di Diritto Canonico, vol. i., p. 10. Napoli, 1850.

[5] De Princip., p. 6.

legibus seu obligationibus quae ita necessario fluunt ex Dei et creaturarum natura ut non possint non existere. Positive law (*jus positivum*) is made up[6] of laws enacted by the free will either of God or of men.

3.—2. Positive law is subdivided into divine and human, according as laws[7] are made by the free will of God or of men.

4.—3. Human law is of three kinds: ecclesiastical or canon law, civil law, and the law of nations. First, the law of nations (jus gentium) is that which obtains among all, or nearly all, nations.[8] It is twofold: primary and secondary. The law of[9] nations, in the proper sense of the term (jus gentium secundarium), is that code of public instruction which defines the rights and prescribes the duties of nations in their intercourse with each other.[10] In this sense, the law of nations bears upon the rights of commerce, of ambassadors, etc.,[11] and is now called international law.

Secondly, civil law (jus civile), in the strict sense of the term, consists of positive laws, enacted by the civil authorities for[12] the temporal welfare of the citizens of a commonwealth. In the United States, laws are enacted: 1, by a Congress,[13] consisting of a Senate and House of Representatives—the powers of Congress extend generally to all subjects of a *national* nature; 2, by the legislatures[14] of the various States; 3, by the city councils. Other laws in force with us pertain to the common law, some to the statute law, and[15] others, finally, to the Roman or civil law.

Thirdly, ecclesiastical law (jus canonicum) is the third kind of human law; of this law we shall now treat.

[6] De Princip., p. 6. [7] Bouix, loc. c., p. 7. [8] Bouix, p. 7.

[9] Cfr. Reiff., Jus Can., Prooem., n. 31. Paris, 1864.

[10] Kent's Comm., part i., lect. i., p. 1, vol. i. New York, 1832. Cfr Rei l. c., n. 32. [11] Kent, l. c., p. 1–191. [12] Bouix, l. c., p. 7.

[13] Kent, l. c., vol. i., part ii., lect. xi., p. 236.

[14] Kenrick, Mor. tract. 6, n. 4. [15] Konings, Mor., n. 177.

## Art. III.

### *What is Canon Law?*

5. Canon law (jus canonicum,[16] jus ecclesiasticum, jus sacrum, jus divinum, jus pontificium) is so named because it is made up of rules or *canons*, which the Church proposes and establishes in order to direct the faithful to eternal happiness.[17] Canon law, in the strict sense of the term, comprises those laws only which emanate from an ecclesiastical authority having *supreme* and *universal* jurisdiction,[18] and in this sense it is defined: Complexio legum auctoritate Papae firmatarum, quibus fideles ad finem Ecclesiae proprium diriguntur.[19] We say, auctoritate Papae *firmatarum*, but not *constitutarum* or approbatarum; because in canon law there are many laws which pertain to the jus divinum, both natural[20] and positive; these laws were neither enacted nor, properly speaking, approved of by the Supreme Pontiff, but merely promulgated by him in a special manner.[21] Canon law, taken in a broad sense of the term, includes not only laws made by the Supreme Pontiff, but also laws enacted by legates, councils, whether national or provincial, etc. Hence canon law, in a wide sense, is defined: Complexio legum a *quocunque* potestatem legislativam possidente in bonum fidelium firmatarum.[22] Canon law, as a science, is termed "ecclesiastical jurisprudence," which, in a strict sense, is defined: The science of ecclesiastical laws, as made by the authority of the Pope. Ecclesiastical jurisprudence, in a wide sense, means the science not only of the Papal ecclesiastical laws,[23] but of *all* ecclesiastical laws.

How ecclesiastical jurisprudence differs from theology and civil jurisprudence we have elsewhere demonstrated.[24]

[16] Phillips, Lehrb., § 3, p. 3. Regensburg, 1871.
[17] Bouix, De Princip., p. 54. [18] Ib., p. 62. [19] Craisson, Man., n. 5.
[20] Bouix, l. c., p. 61. [21] Ib., l. c. [22] Ib., p. 64, 65. [23] Ib., p. 65.
[24] Notes on the Second Pl. C. Balt., n. 3.

## Art. IV.

### *Division of Canon Law.*

6. Canon law is divided:

1. By reason of its author, into divine, or that which is constituted by God, and into human, or that which is enacted by man.[25]

2. By reason of the manner in which it is promulgated, into written and unwritten.[26]

3. By reason of those whom it binds, into common (jus commune), that, namely, which is per se obligatory on *all* the faithful; and into particular or special (jus particulare), that, namely, which is binding on *some* of them[27] only.

4. Into public and private. Craisson[28] thus defines both: "*Publicum* exhibet constitutionem societatis ecclesiasticae, ipsius regimen, ordinem personarum ad invicem in Ecclesia, jura et officia earum, etc.[29] *Privatum* versatur circa obligationes singulorum, prout distinguuntur a gubernatione ecclesiastica—*v.g.*, circa sacramenta recipienda."[30]

5. Into the jus antiquum, novum et novissimum.[31]

According to some canonists, the *old* law (jus antiquum) is that which was enacted or existed prior to the Council of Trent;[32] the new (jus novum) is that which was made by that Council; finally, the modern, or jus novissimum, is that which was published since the Council of Trent.[33] Others employ these terms somewhat differently.

For fuller explanations of the above divisions, we refer to our Notes on the Second Plenary Council of Baltimore.[34]

[25] Tarquini, Jus Eccl. Publ. Instit., p. 131. [26] Ib. [27] Bouix, l. c., p. 65.
[28] N. 9. [29] Ib.
[30] Cfr. Notes on the Second Pl. C. of Balt., n. 8, p. 10
[31] Schmalzgrueber, Jus Eccl., tom. i., n. 249, 250.
[32] Bouix, De Princip., p. 66. [33] Craisson, l. c., n. 10. [34] § 3.

# CHAPTER II.

## ON THE SOURCES OF CANON LAW—DE FONTIBUS JURIS CANONICI.

### ART. I.

*How many Sources of Canon Law are there?*

7. A source or fountain is that from which something takes its origin.[1] By sources of canon law we mean, therefore, the legislative authority of the Church; ecclesiastical laws[2] are said to spring from their proper source when they are enacted or promulgated by those who are vested with the law-making power in the Church.[3] In a broad sense, however, canonists designate as sources of ecclesiastical jurisprudence all instruments that contain the law itself.[4]

8. There are eight sources of canon law, in the strict sense of the term—that is, as forming the *common* and not the particular law of the Church. These sources are: 1, S. Scripture; 2, divine tradition; 3, laws made by the Apostles; 4, teachings of the Fathers; 5, decrees of sovereign Pontiffs; 6, Œcumenical councils; 7, Roman Congregations of cardinals; and 8, custom.[5]

9. To these, some add "civil laws," which, however, derive all their force, so far as they are applicable to ecclesiastical matters, solely from the authority of the Church.[6] In fact, in her judicature, the Church disdains not to

[1] Notes on the Sec. Pl. C. Balt., n. 14. Cfr. Soglia, vol. i., p. 22.
[2] Craisson, Man., n. 11. [3] Tarqu., l. c., lib. 2, n. 23, p. 130.
[4] Soglia, Inst. Jur. Publ., § 14, p. 22, ap. Notes, p. 14.
[5] Craisson, l. c., n. 16. [6] Kenrick, Mor. Tract. iv., app., n. 1.

adopt, at times, the mode of proceedings which is peculiar to civil courts.[7]

10. All these sources may ultimately be reduced to one—the authority of the sovereign Pontiff. For S. Scripture and divine tradition are not, properly speaking, sources of canon law, save when their prescriptions are promulgated by the Holy See. Again, the laws established by the Apostles and the teachings of the Fathers could not become binding on *all* the faithful or be accounted as *common* laws of the Church, except by the consent and authority of Peter and his successors. In like manner, councils are not œcumenical unless confirmed by the Pope. The Roman Congregations but exercise powers conferred upon them by the Pope. Neither can custom obtain the force of universal law save by at least the tacit sanction of the Apostolic See.[8] Hence, all the above sources may appropriately be resolved into one, namely, the authority of the Popes.

11. Reiffenstuel,[9] however, aptly observes that God is the primary or chief, though remote and mediate, source of canon law, publishing laws through the Roman Pontiffs. The proximate and immediate source of ecclesiastical law are the Apostles, the Sovereign Pontiffs, and Councils.[10]

12. God himself, therefore, is the primary source of ecclesiastical law, though He is so but mediately, exercising this authority through the Popes, who are the proximate and immediate source of canon law.

We pass on to the several sources.

[7] Soglia, Inst. Jur. Publ., § 43, p. 82. [8] Craisson, l. c., n. 19.
[9] Jus Can., Prooem., n. 52, tom. i., edit. Paris, 1864. [10] Ib., n. 53.

## Art. II.

### 1. *Of Sacred Scripture as a source of Canon Law.*

13. The S. Scriptures are divided into those of the Old and those of the New Testament. The Old Testament contains three sorts of precepts: moral, ceremonial, and judicial. The moral code of the Old Testament remains in full force in the New Dispensation; the ceremonial and judicial laws have lapsed, and become null and void.[11]

Yet arguments based upon the ceremonial and judicial injunctions of the Old Testament are of no little weight in canon law. Thus, St. Leo the Great[12] points to the dignity of the priesthood of the old law in order to show the excellence of the priesthood of the new. The same is done by St. Jerome[13] in regard to the celibacy of the clergy. The influence and bearing of the Old Testament upon questions of ecclesiastical jurisprudence are thus stated by Zallwein: Si quae sunt quaestiones controversae . . . haud inepte, licet non convincenter, ex Antiquo ad Novum argumentaberis Testamentum."[14]

14. The New Testament is the first and chief source of ecclesiastical law, both public and private. In fact, questions pertaining to the public law of the Church—those, for instance, which refer to the foundation of the Church—are all clearly demonstrated from the New Testament; and, as to questions relating to the private law of the Church, there is scarcely one that cannot be confirmed by the Scriptures of the New Testament.[15]

[11] Soglia, Inst. Jur. Publ., § 16.
[12] Serm., 8 Pass., Dom. cap. viii.
[13] Contr. Jovin., lib. i., n. 34.
[14] Ap. Soglia, l. c., § 16, p. 25.
[15] Ib., § 17.

## Art. III.

### II. *Of Divine Tradition as a Source of Canon Law* (*De Divina Traditione*).

15. By tradition is meant a doctrina non scripta, sed verbis tradita. It is named doctrina non scripta, not because it is nowhere found in writing, but because it was not consigned to writing[16] by its first author. Traditions are divine and human. The former are those which have God for their author, and which the Apostles received either directly from the mouth of Christ or by suggestion of the Holy Ghost.[17] Human traditions are those which emanated from the Apostles or their successors.[18] Human traditions are apostolic when they originated with the Apostles; ecclesiastical, if they come from the bishops.[19]

16. Divine traditions are binding on *all* the faithful, and hence they constitute, though only in a broad sense, one of the sources of canon law, in the strict sense of the term, or as the common and universal law of the Church.[20] Human traditions, on the other hand, regard but the discipline of the Church, and are, as a general rule, applicable to particular localities or countries only.[21]

## Art. IV.

### III. *The Law enacted by the Apostles as a Source of Canon Law* (*de Jure ab Apostolis sancito*).

17. The following enactments are attributed to the Apostles:

1. The Apostolic Creed—Symbolum apostolorum.[22] 2. Abstinence from things sacrificed to idols, and from blood, and from things strangled.[23] 3. The substituting of Sun-

[16] Ap. Soglia, p. 30, 31. [17] Conc. Trid., Sess. iv., Decret de S. Script.
[18] Soglia, l. c. [19] Devoti. Inst. Can., Proleg., cap. iv., § 48 [20] Ib., § 49.
[21] Ib. [22] Bouix, De Princip., p. 108. [23] Acts. xv. 20.

day for the Sabbath of the Jews, and the hearing of Mass every Sunday.[24] 4. The institution of the principal feasts—namely, Easter, Pentecost, and very probably also Christmas.[25] 5. The fast of Lent, and, according to some, the establishment of the chair of St. Peter at Rome.[26]

18. To the Apostles some writers moreover ascribe certain canons which St. Clement, the disciple and successor of St. Peter, is said to have collected and grouped together in two works; one consisting of but one volume, and entitled Canones Apostolorum; the other being made up of eight books, and named Constitutiones Apostolicae.[27]

Writers greatly differ as to the authenticity or genuineness of the "Constitutiones Apostolicae."

Biner[28] thus concludes his remarks on the subject:

*a.* The eight books of Apostolical constitutions are not handed down from the Apostles.

*b.* These constitutions, nevertheless, are very ancient and contain many salutary things.

*c.* Though originally free from error, they were subsequently, in some parts, corrupted and interpolated by heretics.

The same holds good of the Canones Apostolorum,[29] at least this seems to be the more probable opinion.[30]

19. What is the significance and weight of the *jus ab apostolis* sancitum, as a source of canon law?

Cardinal Soglia thus answers: The precepts or laws promulgated by the Apostles as divinely inspired should always remain in force. But the precepts or laws made by them as rectors of churches can be changed by the Sovereign Pontiff.[31]

[24] Craisson Man., n. 22.
[25] Bouix, De Princip., p. 109.
[26] Craisson, l. c., n. 22.
[27] Craisson, l. c., n. 23 (2).
[28] App. Jur. Can., p. 2, c. 4, ap. Craiss. l. c.
[29] Bouix, De Princip., p. 120
[30] Ib.
[31] Inst. Jur. Publ. p. 29, § 18

But how are we to know the difference between these two characteristics of the Apostles, or between the *divine* and the *Apostolic* prescriptions?

This difference is conveyed at times in the express words of the sacred writers.[32] Thus, St. Paul says on the one hand: Not I, but the Lord commandeth;[33] on the other: I speak, not the Lord.[34]

The context and subject-matter may also indicate the distinction.[35]

ART. V.

IV. *Teaching of the Fathers as a source of Canon Law* (*De Sententiis Patrum*).

20. On this head we quote the words of Reiffenstuel: "Dicta sanctorum Patrum sunt doctrinalia, sive magisterialia; non vero undequaque authentica seu vim legis habentia.[36]"

[32] Soglia, l. c., p. 29, § 18. [33] I Cor. vii. 10. [34] I Cor. vii. 12. [35] Soglia, l. c. [36] Jus Can., Prooem., n. 77, tom. i

# CHAPTER III.

## V. DECREES OF SOVEREIGN PONTIFFS (DECRETA SS. PONTIFICUM) AS A SOURCE OF CANON LAW.

### ART. I.

### *Of the Nature of the Power of the Roman Pontiffs.*

21. The decrees of the Roman Pontiffs constitute the chief source of canon law; nay, more, the entire canon law, in the strict sense of the term, is based upon their legislative authority. Hence it is that heretics have ever sought to destroy, or at least to weaken, this legislative power. The following are the chief errors on this head:

22. 1. Luther openly maintained that no legislative authority whatever was vested in the Pontiff.

2. Nicholas de Hontheim, suffragan of the Archbishop of Treves, having in 1763 published a book under the assumed name of Febronius, conceded to the Pope but an *accidental* power to enact or rather propose laws,[1] namely, when an œcumenical council could be convened only with difficulty. Laws thus formed could bind only when accepted by the consent of the entire Church.[2]

3. Many inconsiderate and incautious defenders of Gallicanism hold that the laws of the Sovereign Pontiffs are not binding on the faithful unless they are received or accepted at least by the bishops.[3]

23. To proceed methodically, we shall show, 1, that the Roman Pontiff has legislative power over the entire Church; 2, that the Pontifical laws bind both *de jure* and *de facto*;

[1] Bouix, De Princip., p. 167, edit. 2d.
[2] Phillips, Jus Can., vol. iii., § 136, p. 369, edit. 1850.
[3] Bouix, l. c., p. 167 (3).

independently of their acceptation by any one, even bishops; 3, how Pontifical laws are to be promulgated; 4, what are the various kinds and formalities of Papal laws. Each of these questions will be separately treated in the following articles.

## Art. II.

*The Sovereign Pontiff has received directly from our Lord himself Legislative Power over the entire Church.*

24. We premise: This proposition maintains, 1, that legislative power over the entire Church is vested in the Roman Pontiff; this is *de fide;*[4] 2, that the Pope has received this power *immediately* or *directly* from Christ himself, which is, at present, also *de fide.*[5] We now proceed to prove our thesis. As we shall see farther on (infra, n. 459–462), the Roman Pontiffs have received directly from our Lord the primacy not only of honor but also of jurisdiction over the whole Church. But this primacy of jurisdiction essentially and directly contains the full and supreme legislative authority over the entire Church.[6] Therefore, etc.[7]

25. In proof of the major we shall, at present, content ourselves with giving the definition of the Œcumenical Council of the Vatican: (*a*) "Si quis igitur dixerit, beatum Petrum apostolum . . . honoris tantum, non autem verae propriaeque jurisdictionis primatum ab eodem Domino Jesu Christo directe et immediate accepisse; anathema sit."[8] (*b*) "Si quis ergo dixerit . . . Romanum Pontificem non esse beati Petri in eodem primatu successorem; anath. sit."[9] (*c*) "Si quis ergo dixerit Romanum Pontificem habere tantummodo officium inspectionis, non autem plenam et supremam potestatem jurisdictionis in universam Ecclesiam . . . etiam in iis quae

[4] Ap. Bouix, De Princip., p. 168.
[5] Conc. Vatican., sess. iv., cap. i. Cf. Craiss., 28.
[6] Bouix, l. c., p. 193.
[7] Ap. ib., p. 185.
[8] Conc. Vatican., sess. iv, cap. i.
[9] Ib., cap. ii.

ad disciplinam et regimen Ecclesiae . . . pertinent; . . . aut hanc ejus potestatem non esse ordinariam et immediatam . . . anath. sit."[10]

26. We now come to the minor: Is the legislative power included in that of jurisdiction and inseparable from it? Most certainly. For it is obvious that a person can enact laws for those who are his subjects—that is, those over whom he possesses jurisdiction.[11] Therefore the primacy of jurisdiction vested in the Sovereign Pontiff essentially contains the power to make laws binding on the entire Church.[12]

## ART. III.

### *Of the Acceptance of Pontifical Laws.*

27. Are Pontifical laws obligatory on the faithful or the Church, even when not accepted by any one? We reply in the affirmative. The proof is: Papal laws are binding, even without being accepted by any one, if Popes (*a*) have the power to enact laws independently of such acceptation; (*b*) if, *de facto*, they wish their laws to be binding without such acceptation. But this is the case; therefore, etc.[13]

28. I. *The Sovereign Pontiff can, if he chooses, enact laws obligatory on the entire Church independently of any acceptation.* This is indubitable—nay, according to Suarez, *de fide*.[14] It is proved from the preceding thesis. There it was shown that the Roman Pontiff is invested with a legislative power in the proper sense of the term. Now, if the Pope could bind those persons only who of their own free-will accepted his laws, he would evidently be possessed of no power to enact laws.[15] In fact, the Pontiff, in such an hypothesis, would have no greater authority than any simple layman, or even woman, to whom anybody could be subject if he so chose.[16] He could, at most, propose laws, and would

[10] Conc. Vatican., sess. iv. [11] Bouix, l. c., p. 169. [12] Craiss., n. 29.
[13] Reiff, lib. i., tit. ii., n. 136. [14] Suarez, De Legg., l. iv., c. xvi., n. 2.
[15] Bouix, De Princip., p. 191. [16] Craiss., 29.

therefore, in this respect, be placed on a level with the President of the United States.[17] The latter can propose laws, as is plain from Art. II. Sec. 3 of the Constitution of the United States, which says: "He" (the President) "shall from time to time give to the Congress information of the state of the Union, and *recommend* to their consideration such measures" (laws) "as he shall judge necessary and expedient."[18] Yet he has no legislative power whatever, as is apparent from Art. I. Sec. 1 of the Constitution of the United States, which reads: "All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."[19]

29. II. *The Roman Pontiff de facto wishes that his laws should bind independently of their acceptation by any one.* This is evident from the fact that the wording of the Papal laws, as of laws in general, is mandatory.[20] Now, a command given absolutely does not oblige merely on condition of its being accepted, but unconditionally or absolutely;[21] otherwise the supposed law or command would be no law at all, but merely a counsel.[22]

30. Again, Pope Gregory IV. says: "Praeceptis apostolicis non dura superbia resistatur; sed per obedientiam, quae a sancta Romana Ecclesia et Apostolica auctoritate jussa sunt, salutifere impleantur. . . . Si quis haec Apostolicae Sedis praecepta non observaverit, percepti honoris esse hostis non dubitetur."[23] This canon plainly shows that Papal laws have penal sanctions attached, either expressly or impliedly. Now, from this very fact it is clear that Popes, by their laws, have the will or intention to bind the faithful absolutely, and not merely on condition that the law be first accepted.[24] This, in fact, seems no

[17] Cf. Soglia, vol. i., p. 49. Neapoli, 1864.
[18] Cf. Kent's Comm., vol. i., p. 288.
[19] Cf. ib., p. 222.
[20] Reiff, l. c., n. 138–141.
[21] Ib.
[22] Can. *Quisquis* 3, c. 14, q. 1.
[23] Can. *Praeceptis* 2, dist. 12.
[24] Reiff., l. c.

no longer doubtful, in view of the condemnation by Pope Alexander VII. of the following proposition: "Populus non peccat, etiamsi absque ulla causa non recipiat legem a principe" (Papa) "promulgatam."[25] For subjects would not sin by refusing, even without just cause, to accept a Papal law, if the latter, so far as its binding force is concerned, depended on the acceptation of the people, or were enacted with the implied condition that it be accepted by the faithful.[26]

31. From what has been said it follows that the Roman Pontiffs have both the power and the will to make laws obligatory on the entire Church independently of any acceptation. Our thesis is therefore established, namely: Papal laws bind before being accepted by any one.[27] We therefore reject the following opinion, advanced by Bouix[28] and Craisson,[29] and followed by us in the first and second editions of this work (n. 22, 26, 32): The opinion of those who hold that it is the will of the Roman Pontiffs that certain Papal laws pertaining to discipline should not, *de facto*, bind before being accepted, is lawful and sustained by many Catholic doctors. In fact, the authors alleged by Bouix and Craisson for this opinion either do not maintain it or sustain the very opposite.

32. From what has been said it follows: 1. Papal laws are obligatory on all the faithful without the acceptation of bishops.[30] For if the force of the laws in question depended on the acceptance of the bishops, it would follow that the Sovereign Pontiff could not really make, but merely propose, laws.[31] Hence bishops cannot, as Febronius and certain Gallicans contend, refuse to accept or promulgate Pontifical laws in their diocese, if they consider them inopportune.[32] All they can do is to communicate to the Pope the adverse circumstances, and expose the reasons why the law should not be enforced in their particular dio-

[25] Ap. ib.
[26] Ib.
[27] Supra, n. 27, seq.
[28] De Princ., p. 219.
[29] Man., n. 36.
[30] Craiss, n. 30.
[31] Soglia, vol. i., p. 49.
[32] Ib.

ceses. If the Sovereign Pontiff should, nevertheless, insist on his law being observed, he must be obeyed.[32]

33. If, therefore, a general law of the Roman Pontiff, though promulgated in Rome, is not promulgated in some particular province or diocese, the faithful of such place are, as a rule, excused from its observance, not, indeed, on the ground that the Pope does not wish such law ~~not~~ to be binding before being accepted, but on the presumption, founded in law, that he does not wish to urge its observance, or rather because it can be presumed that the Ordinary has corresponded or is corresponding with the Holy See in regard to the difficulty of promulgating or observing the law, and that, consequently, the obligation of observing it remains meanwhile suspended.[34] Observe, however, that this has reference to certain matters of discipline only; for in questions pertaining to faith and morals the judgment of the Pontiff is irreformable. We say *certain* matters of discipline; for in those matters of discipline which relate to sacred rites, the sacraments, the life and conduct of the clergy, Papal laws are not as a rule modified at the suggestions of bishops.[35]

34. 2. A fortiori, Pontifical enactments, in order to be binding, need not be accepted by the second order of the clergy—namely, the priests.[36] Pontifical laws, moreover, become obligatory without being accepted or confirmed by secular rulers.[37] The contrary opinion is thus condemned by the Vatican Council: "Reprobamus illorum sententias, qui hanc Supremi Capitis cum Pastoribus et gregibus communicationem licite impediri posse dicunt, aut eandem reddunt saeculari potestati obnoxiam; ita ut contendant, quae ab Apostolica Sede vel ejus auctoritate, ad regimen Ecclesiae constituuntur, vim . . . non habere . . .

[32] Bened. XIV., De Syn. Dioec., lib. ix., c. viii., n. 4. Prati, 1844.
[34] Reiff., l. c., n. 143, 144. [35] Bened. XIV., l. c., n. 3. [36] Craiss., n. 32.
[37] Syllabus, prop. 28, 29, 44.

nisi potestatis saecularis placito confirmentur." [38] The nature of the *Placitum regium* has been elsewhere explained by us.[39] The Government of the United States has never claimed any power to review Pontifical documents or forbid their publication.

## Art. IV.

### *Of the Requisite Promulgation of Pontifical Laws.*

35. *Definition.*—By the promulgation of a law is meant its being made publicly known, by the lawgiver, to the community in such a manner that it can come to the knowledge of all concerned.[40] We say *community.* Herein promulgation is distinguished from the knowledge of the law which may have been obtained by private individuals. The promulgation is to be made publicly, that is, to the whole community, because a law binds not merely one or two persons, but the whole community. Hence, until it has been communicated to the community, it does not bind, even though some persons may have acquired a knowledge of it. And once it has been promulgated to the community it binds all, even though some persons do not know it.[41] From this it will be readily seen that it is not necessary, nay, it would be impossible, to make a separate promulgation to each individual.

36. *Q.* Is the promulgation of a law absolutely necessary?

*A.* Yes. No law whatever binds, save when it has been sufficiently promulgated.[42] This follows from the very

[38] Conc. Vatican., sess. iv., cap. iii.
[39] Our Notes, n. 32.
[40] Bouix, de Princip., p. 230.
[41] De Angelis, l. i., t. 2, n. 10.
[42] L. 9, C. de Leg. (i. 14).

nature of things. For it is plain that no community can be bound to observe a law which has not been properly made known to it.[43] Consequently, Papal laws, in order to be binding, must, like all other laws, be promulgated. The same holds of the laws of the secular authorities. Blackstone[44] writes: "A resolution of the legislature is no law till this resolution be notified."

37. *Q.* How should the promulgation of a law be made?

*A.* A law may be promulgated in various ways. No *special form* or *mode* of promulgation is required. All that is necessary is that the law be made publicly known in such a manner that it can come to the knowledge of all concerned.[45]

38. *Q.* What is the manner in which Papal laws, made for the *whole* Church, are to be promulgated?

*A.* 1°. Formerly there were writers, *v.g.*, Natalis Alexander, Tournely, Cabassutius, who affirmed that the laws in question were not binding unless they had been formally promulgated in every diocese and country of the world. In other words, they held that no Papal law was obligatory in a particular diocese or country unless it had been separately promulgated in such diocese or country. Some writers went even so far as to maintain that this mode of promulgation was required by the law of nature. De Marca, Van Espen, Zallwein, and others zealously advocated this form of promulgation, because it favored the view that bishops had the right not to accept, and not to promulgate, Pontifical laws.[46] We say *formerly*; for, at the present day, there is scarcely a Catholic writer who holds that the promulgation in every diocese or ecclesiastical province is necessary.

39. 2°. At the present day, it is the general teaching of

[43] Schmalzg., l. i., t. 2, n. 26.
[44] Com., Introd., sect. ii., p. 8.
[45] Schulte, K. R., vol. i., p. 81 sq.
[46] Bouix, l. c., pp. 197, 232 sq.

canonists and theologians that the promulgation which takes place in Rome is sufficient. Now the manner of promulgation of Papal laws at Rome, as practised for several hundred years and as still in vogue, is to post them at the doors of St. Peter's, of the Lateran basilica, of the Apostolic Chancery offices, and in the public square called Flora.[47] Nor can be said that this mode of promulgation is insufficient. For that promulgation alone is requisite by which the knowledge of the law will easily and conveniently reach the entire Church. Now such is, especially at present, the promulgation made in Rome. For with our modern facilities of communication, with our cables and newspapers, a law which is enacted and promulgated in Rome is made known all over the world in a very short time. Hence a separate and formal promulgation in every diocese is superfluous.

It is therefore admitted by all at the present day, that the promulgation of Pontifical laws enacted for the whole Catholic world as made at Rome, in the manner stated, is sufficient to bind all the Faithful. There is only one exception to this rule, namely, where the Roman Pontiff or an œcumenical council expressly prescribes or sanctions a different or more local and particular form of promulgation. An example of this exception to the rule is given by the holy Council of Trent, sess. xxiv., cap. i., de Ref. Matr. The Council, in the place quoted, enjoins that marriages, on pain of their invalidity, are to be celebrated "in the presence of the parish priest and two or three witnesses. But it also decrees that this law shall be published in *every parish church* of each diocese; and that it shall begin to be of force in each parish *at the expiration of thirty days*, to be counted from the day of its first publication made in said parish." Here, then, the binding force of the Tridentine decree in a particular parish is made contingent upon its publication in such par-

[47] Santi, Prael. Iur. Can. l. i., t. 2, n. 23.

ish. Hence the publication of this law merely at Rome is not sufficient.

It should be observed that in more recent times the Holy See has been accustomed to transmit a printed copy of the law to all nuncios, archbishops, and bishops, who, upon its receipt, publish it to their respective subjects. This publication, however, is not promulgation.

We have said in our question, *for the whole Church.* For, laws made for particular countries, and not for the entire Church, are not published in Rome, but are simply sent, in printed copies, to the Primate, or also to each archbishop and bishop of the respective country.[48]

40. *Q.* Are Papal laws binding all over the Catholic world as soon as they have been promulgated in Rome?

*A.* 1°. A distinction should be drawn between the binding force of a law *in actu primo* and *in actu secundo.* A law binds *potentially* from the very moment it has been promulgated. But its binding force does not become operative in the case of a particular country until it has come, or at least could have come, to the knowledge of the latter.[49] Consequently, although a general Papal law binds *in actu primo* all over the Catholic world, from the moment it has been promulgated at Rome, yet it does not actually bind the faithful in a particular country until it has become known to them, or till after the lapse of a certain period of time during which it could easily have come to their knowledge.

*Q.* Now how long a time is to elapse between the promulgation of the law at Rome and its binding force in a particular place?

*A.* There are two opinions. The first maintains that the law becomes obligatory immediately upon those who reside in the curia or about Rome, but upon others only after the

[48] Bouix, l. c., p. 270. [49] Santi, l. c., n. 24.

lapse of a certain time, to be computed according to the distance of place. The second, which is termed the more probable opinion by St. Liguori,[50] holds that, unless the time is fixed by the law itself, no person whatever falls under the law save after two months from the date of its promulgation: but that after that period it binds everywhere. In fact, no one can doubt that, at the present day, a law promulgated in Rome can be easily known all over the world in two months.

41. *Q.* What is the right and duty of bishops in regard to making known and observed Papal laws, as also decrees and instructions of the Sacred Congregations, *v.g.*, of the Propaganda?

*A.* The bishop is the guardian of the law, general and particular, in his diocese. Consequently it is his right and duty, on receipt, direct or indirect, of an authentic copy of the law, decree or instruction, from Rome, to notify or inform the clergy, and also the faithful—if the law concerns them—under his charge, of it, and take all the other necessary steps to cause it to be observed.[51] However, this official announcement or notification is not promulgation, save in a broad sense.[52]

42. *Q.* When do the laws enacted by the secular government, also with us, generally begin to bind?

*A.* In France, the Code Napoléon declares that laws are binding from the moment their promulgation *can* be known.[53] With us, "a statute or law operates from the *very day* it passes, if the law itself does not establish the time."[54] In fact, the laws enacted by our State legislatures generally state expressly that they take effect immediately after their pas-

[50] St. Liguori, l. i., n. 96 sq.

[51] Ib., n. 96.

[52] Bouix, l. c., p. 242.

[53] Kent, Com., vol. i., p. 458.

[54] Ib., p. 457.

sage. Kent, however, very justly observes "that it would be no more than reasonable and just that the statute or law should not be deemed to operate until it was duly promulgated."[55] Hence the New York Revised Statutes are in harmony with justice and equity when they declare "that every law, unless a different time be prescribed therein, takes effect throughout the State on, and not before, the twentieth day after its final passage."[56]

43. It should be observed here that secular governments or national and state legislatures have nearly everywhere discarded the practice of promulgating their laws in each province. However, they cause them to be published either in an official newspaper, or in various newspapers issued in the different localities affected by the laws. This publication is intended as a convenience to the public, rather than as a formal promulgation.

## Art. V.

### *Various Kinds of Apostolic Constitutions or Letters.*

44. Apostolic letters or constitutions are divided:

I. By reason of their *subject-matter* (*quoad materiam*) into, *a*, *common ordinances* (ordinationes communes), which enact or establish something for the *entire* Church, or at least for a considerable part of it; *b*, into *particular ordinances* (ordinationes particulares), which lay down prescriptions for a private person only, or in some transient affair.[57]

45. 1°. *Common ordinances* are made up of constitutions, properly so-called, decrees, decretal epistles, and encyclicals.[58]

*a*. *Constitutions* (constitutiones), properly speaking, are

[55] Kent, Com., vol. i., p. 458.

[56] Ib., p. 459.

[57] Bouix, De Princip., pars ii., sect. ii., cap. vii.

[58] Ib.

tnose Apostolic letters which ordain, in a permanent manner, something for the *entire Church*, or part of it.[63]

*b*. By *decrees* (decreta) are meant the constitutions just mentioned, when issued by the Roman Pontiff not in reply to questions addressed to the Holy See,[64] but motu proprio, with or without the advice of the cardinals.[65] The term "decree" is, however, not unfrequently used to denote Pontifical laws or enactments of every description.[66]

*c*. *Decretal epistles* (decretales epistolae, responsa) differ from decrees only in that they are dictated[67] in reply to questions of bishops or other persons.[68] They have the force of general laws, being framed for the purpose of deciding in *similar* cases, save when something is ordained dispensatively (dispensative).[69]

*d*. *Encyclicals* are the above-mentioned constitutions or decretals when addressed to the *bishops* of the whole world or of some country. Encyclicals are generally made use of by Popes in order to determine some point of doctrine or abolish abuses, as also to introduce uniformity of discipline.[70]

46. 2°. By *particular ordinances* (ordinationes particulares) are meant those letters in which the Roman Pontiff replies to persons who either ask for some favor or report on some particular affair, or request directions for a transient object or private individual. These letters are named *rescripts* (rescripta).[71]

47. II. *Quoad formam*, or viewed as to their *form*, Pontifical letters or constitutions are divided into Bulls and Briefs. For the Pontifical letters which are mentioned above are issued in the form either of a bull (bulla) or of a brief (breve);[72] though, at present, frequently in neither of these forms.

48. *Bulls*, so-called from the seal, whether of gold, silver

[63] Bouix, De Princip., p. 273, pars. ii., sect. ii., cap. vii. Cfr. Craisson, Man. n. 47. [64] Ib. [65] Notes on the Sec. Pl. C. Balt., p. 18.

[66] Bouix, De Princip., p. 274. [67] Notes on the Sec. Pl. C. Balt., p. 18, n. 21

[68] Bouix, l. c., p. 274. [69] Ib. [70] Ib. (4°) [71] Ib., p. 274. [72] Ib., p. 275.

or lead, which is appended to them, begin thus:" *Leo* (or the name of the reigning Pontiff) *Episcopus, Servus servorum Dei.*"[74] Briefs begin with a superscription having the name of the reigning Pontiff, thus: *Leo PP. XIII.* Formerly bulls had appended on a silken or hempen cord a leaden (sometimes silver; or even gold) seal, and were moreover written upon thick, coarse, and somewhat dark parchment, in old or Teutonic letters, and without any punctuation. At present, according to a *motus proprius* of Pope Leo XIII., now happily reigning, issued Dec. 29, 1878, the use of Teutonic characters is entirely abolished, and the ordinary Latin mode of writing substituted; the use of the leaden seal is restricted to the more important bulls. The other bulls, like briefs, have a red seal impressed, and are written on fine white parchment.[75] The new red seal of bulls, as prescribed by Pope Leo XIII., bears on its face the images of St. Peter and St. Paul, surrounded by the name of the reigning Pope.[76]

### Art. VI.

#### *Of Rescripts (De Rescriptis).*

49. **For definition of rescripts, see n. 46. See also Bizzarri, *Collectan.*, p. 666, for the latest decisions concerning rescripts.** What force have rescripts? They have the force of law, *inter partes*[77]—that is, among those only for whom they were given.[78] Thus, a rescript conceded to a plaintiff, granting a trial *without appeal*, is *equally* beneficial to the defendant, who may wish to bring a counter-action against the plaintiff.[79]

[73] Bulls are generally not signed or subscribed by the Pope, but only by several officials. Consistorial bulls are signed by the Pope. Phillips, vol. iii., p. 646.

[74] Placed in the first line, and not in the shape of a superscription, title, or heading. Bulls have no heading. Cfr. Phillips, Jus. Can., vol. iii., sect. 154, p. 645. Edit. Ratisbon, 1850.

[75] Acta S. Sedis, vol. xi., 1879, p. 465.

[76] Bouix, De Princip., p. 277.

[77] Reiffenst., lib. i., tit. iii., n. 9.

[78] See our Notes on Sec. Pl. C. Balt., n. 23, p. 19. See also Devoti Prolegom. § xxxvi. Edit. Leodii, 1860.

[79] Reiffenst., l. c., n. 10.

50. Though rescripts have not of themselves the efficacy of universal laws, yet they may serve as precedents, and be applied to cases[80] of a similar kind, and hence they sometimes acquire indirectly the force of common laws. They have the same force when inserted in the *Corpus juris.*

51. How many kinds of rescripts are there?

We answer, 1. Some rescripts are contra legem, others praeter legem, and others finally secundum legem.[81]

2. Rescripts are again divided into rescripta gratiae and into rescripta justitiae. The latter, termed also rescripta ad lites, are those in which, for instance, the Pope, in causes devolved upon him, constitutes delegated judges.[82] The former, called also rescripta ad beneficia, are those which bestow benefices or other similar favors.[83]

52. How are rescripts vitiated?

We answer: In a threefold manner.

1. *By defect in persons* (vitio personarum)—that is when parties are incompetent either to give or to obtain rescripts.[84]

2. *By defect in petitions* (vitio precum), which either suppress and conceal the truth or contain a falsehood—that is, are either surreptitious or obreptitious.[85] In canon law, the terms subreptio and obreptio are interchangeable and used synonymously,[86] so far as concerns the matter under discussion.[87]

3. *By defect in the form* (vitio formae), rescripts are finally made void when, namely, the rescript was not properly issued[88]—*e.g.*, when some important word or sentence is erased,[89] etc.

53. Rescripts, at least of justice, are vitiated by defect in petitions, when, by fraud or malice, a falsehood is

[80] See our Notes, p. 19, n. 23. Cfr. Reiffenst., l. c., n. 10, 12, 13, 14.
[81] Reiffenst., l. c., n. 22. [82] Ib., n. 27, 28. [83] Ib., n. 29.
[84] Soglia, Jus Publ., § 29. [85] Ib., § 30.
[86] Reiff., lib. i., tit. iii., n. 155. [87] Cfr. Soglia, l. c., § 30 [88] Ib., § 29. [89] Ib., § 31

asserted or the truth suppressed;[90] but if this is done through ignorance or simplicity, and the latter was the cause of obtaining merely the form of the rescript, it does not annul the substance of the rescript.[91] Where, however, the Pope would have absolutely withheld the rescript, if the truth had been stated, the rescript is completely voided, even though the surreption proceeded from ignorance or simplicity.[92]

54. The execution of Papal rescripts is usually committed to ecclesiastical dignitaries.[93] At present, however, simple confessors are frequently entrusted with the execution of rescripts, at least of the *S. Poenitentiaria*, containing dispensations from impediments of marriage.

It is incumbent upon the officials or dignitaries to whom the task is entrusted of executing or giving effect to rescripts to ascertain whether preces veritate nitantur; and in case the facts or prayers upon which the rescript is based are without foundation, these officials should so inform the Pope before giving effect to the Papal letters.[94]

55. *Q.* How do rescripts lapse?

*A.* 1. *Rescripta justitiae* lapse at the death, resignation, translation, or deposition of the person conceding them, if at the time the cause or trial had not yet begun[95] (re adhuc integra); but not if proceedings had already commenced in the case (re non amplius integra), *v.g.*, by the citation of the parties to the suit, made before the demise of the person who granted the rescript.[96]

2. As to *rescripta gratiae*, we must distinguish between the rescripta gratiae that contain a gratiam factam and those containing merely a gratiam faciendam.[97] *a.* Rescripts containing a gratiam jam factam do not, even though *res est*

[90] Cfr. Soglia, l. c., § 30. [91] Ap. Reiffenst, l. c., n. 159. [92] Ib.
[93] Infra, n. 233. [94] Phillips, Jus Can., vol. iii., § 155, p. 654.
[95] Reiffenst., lib. i., Decret. tit. 3, n. 232, 235. [96] Ib. n. 238, 241.
[97] Craisson, Man., n. 71.

*adhuc integra,* expire with the decease of the person conceding them.[98] *b.* Rescripts that confer a gratiam faciendam or a gratiam concessam non in proprium recipientis litteras, sed in alterius[99] duntaxat favorem, lapse at the death of the person giving them, si res est adhuc integra.

56. Now, rescripts contain a gratiam factam when, *v.g.*, power is given in them to an individual or a religious community to[100] grant dispensations, to absolve, first, either persons in general; or, second, persons in particular—*i.e.*, determinate persons, provided the person[101] obtaining the rescript in the second case is constituted the *executor necessarius*—*i.e.*, is commanded, *v.g.*, to grant a dispensation to Titius if he knows the petition of Titius to be grounded in truth. Such are ordinarily dispensations for marriages.

57. On the other hand, rescripts contain a gratiam primum faciendam when they authorize the party obtaining the rescript to confer, *if he deems it* proper or desirable, a favor (*v.g.*, a dispensation) upon a determinate person; *v.g.*, if the Apostolic letters say: Dispenses cum Titio, conferas Caio beneficium, si volueris, si expedire judicaveris.[102] In this case, the person who obtains the rescript is constituted the *executor voluntarius*, and the gratia contained in the rescript is not *jam facta*—*i.e.*, completely or absolutely[103] bestowed by the Pope, but is merely gratia facienda—*i.e.*, to be imparted conditionally, namely, if the executor thinks proper to do so.

58. 3. Rescripts, in general, may also lapse, by being[104] revoked either tacitly or expressly (revocatione) and by being renounced or refused (renuntiatione) by those per sons in whose favor they were made.[105]

[98] Reiff., l. c., n. 250. [99] Ib., n. 251.
[100] Ib., n. 254. [101] Ib., 256, 257. [102] Ib., n. 258.
[103] Leuren. Forum Eccl., lib. i., Decret. tit. 3, Qaest. 363. Augustae Vindelicorum, 1737. [104] Ib., Qu. 361. [105] Ib., Qu. 360.

# CHAPTER IV.

## VI. ON THE DECREES OF COUNCILS AS FORMING A SOURCE OF CANON LAW.

### ART. I.

### *Of Œcumenical Councils.*

59. Councils in general are defined: "Coetus auctoritate legitima congregati ad tractanda negotia ecclesiastica, de quibus Episcopi pronuntiant."[1]

It is a mooted question whether councils are of divine or ecclesiastical institution. Œcumenical councils are not absolutely necessary to the Church, though they are very useful.[2]

Councils are divided into œcumenical, national, provincial, and diocesan.[3]

60. What are the essential conditions or requisites of an œcumenical or general council?

We answer:[4]

1. An œcumenical council must be convoked by the authority of the Roman Pontiff, or, at least, with his consent, and be presided over by him or his legates.[5]

2. All the Catholic bishops of the world are to be called or invited, though it is not indispensable that they should *all* be present.[6]

3. The acts of the council must be confirmed or approved by the Pope.[7]

[1] Bouix, ap. Craisson, Man., n. 77. [2] Craisson, l. c. [3] Ib., n. 79.
[4] See our Notes on the Sec. Pl. C. Balt., n. 33, p. 27.
[5] Devoti, Inst. Can. Prolegom., § xxxviii. Leodii, 1860. [6] Ib [7] Ib

61. Who have the right of suffrage at general councils? 1. Bishops alone are *jure divino*,[8] possessed by virtue of *their office* of the right of *decisive* vote. 2. Cardinals who are not bishops; abbots-general of an entire order, but not abbots of single monasteries belonging to a religious community subject to a general abbot, superiors-general of religious orders: all these have a decisive vote, though only by virtue *of privilege*.[9] 3. Procurators of bishops lawfully absent do not possess, according to the general law of the church, a decisive vote. They received, however, from Pope Pius IV. the right to cast a *consultive vote* in the Council of Trent.[10] Pope Pius IX. decided that in the *Vatican Council* the procurators of absent bishops could be present only at the public sessions, and that without any vote, but not at the private sessions.[11]

62. What is the canonical mode or method to be observed in the celebration of œcumenical councils? 1. There must be freedom of discussion, or liberty in decisions and judgments. All acts extorted by fear and violence are (ipso jure) null and void. 2. No fraud or deception must be practised on the Fathers. 3. There must be, moreover, a sufficient examination into the questions submitted to the council. Once, however, the council has defined a question, no doubt can any longer be entertained as to whether the council used sufficient care and deliberation in its definitions.

63. What is the authority of œcumenical councils?

We answer: The decrees of general councils have the efficacy of universal laws, and constitute, therefore, one of the sources of canon law, in the strict sense of the term.[12]

64. *Q.* Is the Council of Trent received in the United States (*quoad disciplinam*)?

[8] Soglia-Vecchiotti, Inst. Can., lib. i., § 39.
[9] Ib.
[10] Bened. XIV., De Syn., l. 3, c. 12, n. 5.
[11] Soglia-Vecchiotti, l. c.
[12] Craisson, l. c., n. 89

*A.* We say "quoad disciplinam"[18] since no one will doubt that, in matters of faith, the Council of Trent fully obtains with us.

We now give a direct answer: 1. The disciplinary law of the Council of Trent is not, as *a whole* or in its entirety, in force with us, though *many* of the decrees of Trent are made obligatory throughout this country by the Fathers of the Second and Third Plenary Councils of Baltimore.[19]

2. Again, the Fathers frequently express their sincere desire of approaching and conforming to the prescriptions of the general law of the Church, and therefore of the Council of Trent.[20]

3. Kenrick writes: "In Conciliis Baltimorensibus passim allegantur (Decreta Concilii Tridentini), licet *universa* (decreta) non sint speciali decreto promulgata."[21] We observe that even the disciplinary decrees of the Council of Trent do not, *per se*, require any promulgation in this country, in order to be binding with us.[22]

## Art. II.

### *Of Particular Synods, whether National, Provincial, or Diocesan.*

65. National councils are those to which the Bishops of a whole nation are summoned.[23] These councils are convoked by the Patriarch, Primate, or other dignitary having competent authority.[24]

The Archbishop of Baltimore cannot convene national or plenary councils by virtue of the praerogativa loci,

[18] Cfr. Craisson, l. c., n. 93.
[19] See Acta et Decreta, n. 56. Cfr. Conc. Trid., sess. xxiv., cap. 2, De Ref.
[20] Concil. Pl. Balt., ii. passim, n. 59, p. 47.
[21] Mor. Tract iv., n. 15.
[22] Ib., Tract xviii., n. 144.
[23] Craisson, Man., n. 80.
[24] Devoti, Prolegom. § xli.

attached to the See of Baltimore.[a] As a matter of fact, however, the Holy See appointed the Archbishop of Baltimore Apostolic Delegate to assemble and preside over the three national councils, so far, held in this country: the one in 1852, the other in 1866, and the third in 1884.

The Roman Pontiffs were wont to hold national synods of Italy down to the seventh or eighth century. Such councils were also customary in Africa.[26]

66. Councils are named provincial when the Bishops of a province are *called* together by the Metropolitan,[27] though it is not essential that they should all be present at the council.

67. How often are provincial councils to be held?

We answer: 1. In the first centuries of the Church, they were celebrated twice a year.[28] 2. The Third Œcumenical Council of Constantinople prescribed that these councils should take place *once* a year. 3. Finally, the Fifth Lateran Council, as well as that of Trent,[29] ordained that they should be convened once every three years.[30]

68. It may be observed that but very few provincial councils were held within the last three centuries in France, Germany, Austria, Spain, and even in Italy, save those of Milan under St. Charles Borromeo. Hence it would appear that the Holy See tacitly consents to this custom.[31]

69. In the United States, provincial councils and diocesan synods are more numerous. This is owing in no small degree to the fact that our government has never thrown—in fact, could not throw—any obstacles in the way; while in Europe the governments but too frequently interfered with these meetings.[32] The law enacted by the Council of Trent—to wit, provincial councils should be held every

[a] Notes on the Sec. Pl. C. Balt., n. 34, p. 28.

[26] Soglia, l. c., tom. i., § 37. [27] Craiss., l. c., n. 80. [28] Ib., n. 81.

[29] Sess. 24, cap. 2, De Ref. [30] Bouix, Concil. Provinc., p. 420–425.

[31] Craisson, l. c., n. 81. [32] Cfr. Phillips, Jus. Can. t. ii., p. 274.

three years—should be accurately observed throughout the United States.[33] In parts of the West Indies, these councils are held once every four years.[34]

☞ 70. Q. What persons should be called to provincial or national councils, also in the United States?

A. 1. All the Bishops of the province or nation. They are obliged to come in person, unless they are lawfully hindered.[35] If they are lawfully hindered, they are bound to send procurators to represent them. 2. Apostolic administrators appointed by the Holy See for dioceses whose bishops, though still living, are either unable or incapacitated to govern the diocese. 3. Vicars-capitular—with us administrators of dioceses *sede vacante*.[36] 4. Vicars-apostolic, who exercise jurisdiction in districts not yet erected into bishoprics.[37] (Conc. Pl. Balt. II., n. 60, note 1.) 5. Cathedral chapters; they have a right to be present at the council through their delegates or representatives chosen by themselves. 6. Abbots possessed of jurisdiction not only over their monasteries, but also of quasi-episcopal jurisdiction over the secular clergy and laics in a certain part of the province or nation.[38]

These six classes alone have a right to be called *de jure* to the councils in question.[39] For they alone possess episcopal or quasi-episcopal jurisdiction. However, *by custom*, also in the United States, the following persons are also called to the councils: 1. Coadjutor and auxiliary bishops of the province or of the nation, and also strange bishops who may happen to be in the province or country at the time;[40] 2. Provincials of regulars; 3. Rectors of major seminaries, 4. Mitred abbots who have jurisdiction merely over their

[33] Conc. Pl. Balt. II., n. 56, 57. [34] Coll. Lac., l. c., p. 1103.
[35] Conc. Trid. sess. 24, c. 2, De Ref. [36] C. Pl. Balt. II., n. 60.
[37] Cf. infra, n. 524.
[38] There are no abbots in the U. S. who have such quasi episcopal jurisdiction.
[39] Con. Pl. Balt. II., n. 60. [40] Bouix De Conc Prov., p. 111 sq.; ib., p. 122.

monasteries, and not over seculars; 5. Finally, those persons whose services the bishops wish to make use of[41] —*v.g.*, those priests whom bishops usually take along with them to the council, as their theologians or canonists.[42] Besides, all priests or ecclesiastics who think themselves injured may present their grievances to the council.[43] Laymen are sometimes invited to attend some of the sittings, either to act as notaries, as was done in several of the Prov.[44] C. of Westminster, England; or also in order to explain certain matters: thus, several eminent lawyers were admitted to one of the public sittings of the First Prov. C. of Baltimore, in order to explain certain points of the civil law in relation to Church property.[45]

Not all persons, however, who are invited to the council have a right to a decisive vote. For to cast a decisive vote is to concur in making laws for the province or nation, and is therefore an act of episcopal or quasi-episcopal jurisdiction.[46] Hence, by the general law of the Church, only those have a decisive vote who exercise episcopal jurisdiction in the province or nation, namely: 1. The bishops of the province or nation; 2. Apostolic administrators of dioceses; 3. Vicars-apostolic of districts; 4. Vicars-capitular or administrators of dioceses *sede vacante;* 5. Abbots possessed of quasi-episcopal jurisdiction over the secular clergy and laity in a certain part of the province or nation.

The following have only a consultive vote, by the general law: 1. Auxiliary and coadjutor bishops, and also other titular bishops who live in the province or country, but do not exercise episcopal jurisdiction therein, also strange bishops who may happen to be at the council; procurators of bishops lawfully absent. All these may receive the right of casting a decisive vote, if the council con-

[41] Conc. Pl. Balt. II., n. 60.

[42] Coll. Lac., l. c., p. 1415, n. 20.

[43] Ferraris, l. c., n. 26.

[44] Coll. Lac., l. c., pp. 974, 999, 1026, 1066.

[45] Ib., p. 15.

[46] Ib., p. 114.

sents.[47] In the United States it is the custom for all of these persons, except visiting Bishops, to cast a decisive vote. 2. Cathedral chapters.[48] 3. Mitred abbots and general superiors of orders. 4. Provincials of regulars, rectors of major seminaries, and the theologians of the bishops.

See the acts of the *Third Plenary Council of Baltimore*, p. lxiii, where the discussion and vote of the Fathers are given on the admission and right of voting of abbots and superiors of regulars. After mature deliberation, the *Council* decided to give the right of decisive vote to the two abbots-general of their orders, who were present; namely, to Rt. Rev. Wimmer and Rt. Rev. Mundwiler; and also to Rt. Rev. Sorin, Superior-general of the Congregation of the Holy Cross. The motion to extend the same privilege to all the other abbots of single monasteries was rejected by the Council.

71. In provincial councils matters are settled by a majority of votes. Metropolitans have no preponderating voice, even when there is a tie.[49]

72. The decrees of provincial councils must be submitted to the Holy See (in the U. S., and other missionary countries, to the Propaganda; elsewhere, to the S. C. C.) before being promulgated.[50] This is done, not that these decrees should be confirmed by the Holy See, but that whatever may be too strict or somewhat inaccurate may be corrected; though, not unfrequently, they have been not merely revised and, if necessary, amended, but also confirmed by apostolic letters at the request of metropolitans.[51]

It is lawful to appeal from these councils when they are not approved *in forma specifica*,[52] since it sometimes happens that these councils, even after being corrected by the

[47] Bouix, De Conc. Prov., pp. 119. 125. [48] Ferr., v. Concilium, art. ii., n. 15.
[49] Craisson, n. 85. [50] Sixtus V. Constit. Immensae, ap. Craisson, n. 86.
[51] Bened. XIV. De Syn. Dioec., lib. xiii., cap. 3., n. 3, 4.
[52] Craiss., n. 87. Bouix, De Episc., tom. ii., p. 392.

Holy See, yet contain certain regulations which are rather tolerated than approved by the Sacred Congregation.[63] None of the provincial or national councils of the U. S. seems to be approved in forma specifica.

73. What has been said of provincial councils is, in most respects, applicable to national councils.[64] Provincial councils are convened by the metropolitans in person, or, if they be lawfully hindered, by the oldest[65] suffragan bishop. National councils in the U. S., on the other hand, are assembled by express direction of the Sovereign Pontiff, who appoints a representative of his authority in the apostolic delegate he commissions[66] to preside over them.

74. Each bishop may, in individual cases, relax in his diocese the decrees of prov. or national councils, unless it be said that they are approved in forma specifica.[67] Provincial councils, as was seen, are called by the metropolitan; sometimes, however, the convening and celebration of these councils were agreed upon in a special meeting of the bishops of the Province, held beforehand for that purpose; as, for instance, in the case of the Fourth Prov. C. of Quebec in 1868, and in the case of the Second Prov. C. of Australia, held in the city of Melbourne in 1869.[68] In regard to diocesan synods, see our "Notes."[69]

[63] Gousset, ap. Craiss., n. 87.

[64] Cfr. Soglia, vol. i., p. 74. Ferraris, v. Concilium, art. i., n. 5.

[65] Conc. Trid., sess. 24, cap. 2, De Ref.

[66] Coll. Lac., l. c., p. 250.

[67] Kenrick, Mor. Tract. 4, vol. i., p. 118. Cfr. Notes on the Sec. Pl. C. Balt., p. 438.

[68] Coll. Lac., vol. iii., p. 1057, 1058, 1415, n. 14.

[69] p. 30.

# CHAPTER V.

## VII. ON THE ROMAN CONGREGATIONS AS A SOURCE OF CANON LAW.

### ART. I.

### *Efficacy of the Decisions of the Sacred Congregations.*

75. Later on we shall treat of the various functions and powers of each of these congregations. At present, we shall merely consider the force of the decisions or declarations (declarationes) of the Roman congregations. Congregations of cardinals (congregationes cardinalium, congr. Romanae) are committees or commissions[1] composed chiefly of cardinals, to whom the Sovereign Pontiff refers certain matters that relate in a special manner to the Church.

76. There are two kinds[2] of congregations: 1, permanent or standing committees or congregations (*congregationes ordinariae*), those, namely, which are permanently established; 2, temporary congregations (*congregationes extraordinariae*), or those which are convened[3] to attend to some particular or transient matter only, and therefore have no permanent existence. We shall here consider the decisions of the *congregationes ordinariae* only. The following are *congregationes ordinariae:* Congregatio Sacri Officii or Inquisitionis, Congr. Indicis, Congr. Consistorialis, Congr. Episcoporum et Regularium, Congr. Sacrorum Rituum, Congr. de Propaganda Fide, and several others.[4]

[1] Salzano, l. c., vol. i., p. 76.
[2] Ib., p. 77.
[3] Phillips, Kirchenr., vol. iv., § 200, p. 495, Ratisbon, 1850
[4] Phillips, l. c.

77. The question therefore comes up: Have the declarations of these congregations the force of universal law? The question is asked especially in reference[5] to the Congregatio Concilii, because of its special powers. We ask, therefore: Are the decisions of the Congr. Conc. binding on the entire[6] Church? There are three opinions: The first[7] denies that these decisions have the efficacy of common law, 1, because this S. Congr. merely uses the words "*censuit, censemus*," but does not employ any imperative or prohibitory terms in its declarations; 2, because these decisions are issued for particular cases only. For other reasons, see Bouix.[8] Hence, say the defenders of this opinion, the Pontiff speaks through this congregation only as its president, and not as head and doctor of the Church.[9]

78. The second opinion affirms that these decisions, when authentic, *i.e.*, when signed[10] by and having the seal of the prefect and secretary of the respective congregation, are of the same authority as though they had emanated *directly* from the Pope, and are, therefore, binding on the entire Church, even[11] when issued for a particular case only.

79. The third distinguishes thus: These declarations are of two kinds: 1, *declarationes extensivae*, *i.e.*, those which *extend*, as it were,[12] or stretch the meaning of words beyond their *ordinary* signification, and grant or prohibit something accordingly. These decisions,[13] forming, as it were, *new* laws, do not obtain the force of law unless they are issued by the special order of the Pope, and properly[14] promul-

[5] Craisson, Man., n. 95.

[6] We say "*entire Church*"; for it is certain that these decisions have the force of law *in casibus particularibus, pro quibus fiunt*; but are they binding also *in casibus similibus?* Here there are three opinions, as given above (Cfr. St. Liguori, lib i., n. 106. Quaer. 2°. Mechliniae, 1852.)

[7] Sanchez, Diana, Bonac., Laym., ap. Bouix, De Princip., p. 338.

[8] Ib.

[9] Craisson, l. c., n. 98.

[10] Phillips, Lehrb., § 43, p. 79.

[11] Bouix, De Princip., p. 341.

[12] Ib., p. 344.

[13] Cfr. Phillips, Lehrb., § 43, p. 79.

[14] Craiss., n. 100

gated; 2, by *declarationes comprehensivae* we mean those which do not depart from the ordinary sense of the words of the law; which, therefore, are mere explanations of,[15] but not additions to, the law; which consequently have the force of universal law, and are retroactive.

80. *Q.* What is the practical consequence of this diversity of opinions?

*A.* One of the above opinions denies that the decisions of the Congr. Concilii have the efficacy of law; now, the Holy See has so far allowed this opinion to be taught in Catholic schools of learning.[16] Hence, it is lawful to hold that the declarations of the Congr. Concilii are not to be received as[17] universal laws. Nevertheless, it were rash to assert that these declarations can be practically set at naught;[18] for they are made by authority of the Holy See, and therefore must, at least ordinarily speaking, be complied with.[19]

81. Have the decrees of the other congregations, *v.g.*, of the Congr. Rituum,[20] of the Sacra Poenitentiaria, etc., the force of law—that is, are they binding on the entire Church? The three opinions above given also exist in this case. Hence, what has been said of the Congr. Concilii applies to all other congregations.[21]

[15] Bouix, De Princip., p. 344. [16] Bouix, De Princip., p. 345.
[17] Ib., l. c., p. 345. [18] Ib., p. 347. [19] Ib., p. 346.
[20] The *sententia communissima* holds that the decrees and decisions of the Congr. Rituum bind *in casibus similibus*. Gury, vol. i., n. 130. Romae, 1869.
[21] Ib., p. 347.

# CHAPTER VI.

## VIII. ON CUSTOM AS A SOURCE OF CANON LAW.

### Art. I.

### *Nature and Division of Custom.*

82. *Q.* What is custom, and how is it a source of canon law?

*A.* 1°. Custom may be considered as a *fact* and as a *law.*[1] Regarded as a fact (*consuetudo facti*), it means the repeated and continuous acts of a community. If custom be viewed as a law (*consuetudo juris*), as we take it here, it signifies the *effect* or obligation produced by the above continuous acts.[2] Hence custom as here understood is defined: An unwritten law obliging persons to do or omit something, introduced by long-continued, free and public acts of a community, with the approbation, express, tacit, or presumed, of its law-giver.[3] We say *law*; for, as we shall see below, custom has the same force as a written law, and differs from the latter merely in the manner in which it begins. We say *introduced by continuous acts*, etc.; because custom does not, like a statutory law, derive its binding force from the expressed will of the law-giver or from a formal promulgation, but simply from the long-continued acts of a community. Hence it is called an *unwritten* law.[4] We say *community;* custom has the force of law, and therefore binds not merely certain individuals, but the whole community in which it exists. Consequently it is but fair that custom should receive this binding force from the *consent*, expressed by free and long-repeated acts, of the *whole community*, or at least the *greater part* of it.[5] Hence the repeated acts of an individual or of a family can never constitute custom.[6] The word community, however, is here taken in a broad sense, and compre-

[1] De Angelis, l. i., t. 4, n. 1.

[2] Leur. For. Eccl., l. i., t. 4, q. 365.

[3] Schmalzg, l. i., t. 4, n. 1.

[4] De Angelis, l. c., n. 2.

[5] Schmalzg., l. c., n. 3.

[6] Suarez. de leg., l. 7, cap. 7, n. 6.

hends, *v.g.*, cathedral chapters, the clergy or laity of a diocese, religious communities, etc.[7]

83. 2°. From what has been said, it is evident that custom is a source from which springs ecclesiastical law, both general and particular. For custom, properly constituted, produces law, general or particular, binding upon the respective community, just as strictly and fully as a written law.[8]

84. *Q.* What are the various kinds of custom?

*A.* Custom is divided as follows: 1°. According to its different effects, into that which is (*a*) in *full accord with* the written law (secundum legem); (*b*) *beside or beyond* it (praeter legem); *v.g.*, where, by custom, fast is kept on a day when the law does not require it; (*c*) *directly opposed to it* (contra legem); *v.g.*, where by custom fast is not kept on a day on which the law prescribes it. 2°. According to its efficient cause, into (*a*) *universal*, or that which obtains throughout Christendom; (*b*) *general*, which prevails in an entire province or state; (*c*) *particular*, which exists in some city or town.[9] 3°. According to its formal cause, into *judicial* and *extrajudicial*. Judicial custom is induced by several similar judicial decisions in the same kind of causes. Two such decisions given within ten years suffice, provided no contrary decision was rendered during that time. Extrajudicial custom is established by long usage out of courts.[10]

85. *Q.* What are the main differences between custom and prescription?

*A.* 1. Prescription may be introduced by private or particular persons, while custom can be established by a community only.[11] 2. Prescription tends to the acquiring of some *right* by *individuals*;[12] while custom establishes a *law*, and therefore affects *a whole community*, i.e., all who dwell in the locality in which the custom prevails.[13]

[7] Schmalzg., l. c.
[8] Cap. 9, 11, de Consuet. (i., 4).
[9] Reiff., l. i., t. 4, n. 14 sq.
[10] Ib., n. 18.
[11] Craisson, Man., 111.
[12] Reiff., l. c., n. 23, 24.
[13] Bouix, l. c., p. 356.

## Art. II.

### *Of the Essential Conditions of Custom.*

86. In order that custom may have the force of law certain conditions are indispensable: 1, on the part of the community; 2, of the Roman Pontiff; 3, of custom itself; 4, of the duration of custom.

87. I. *On the part of the community* (ex parte communitatis), it is requisite that custom be introduced: 1, by a community; 2, by the greater part of this society; 3, with due knowledge or consciousness; 4, with liberty; 5, with the intention of contracting an obligation, if there is question of custom praeter legem; 6, that the frequency of acts be not interrupted[19] before the custom is completely established. We say, 1, *by a community*—that is, not merely by one person or a private family,[20] but by a community that can make its own laws, *v.g*, a city[21] or State. Thus, an ecclesiastical custom relating to the clergy and laity can be introduced by the clergy and laity of a diocese, province, or country; in like manner, a custom pertaining to the clergy only may be established by the clergy of a diocese or province. The same holds good of religious orders[22] and the like. We say, 2, *by the greater part of the society*. For it is a general rule, that only the acts of a majority[23] are binding on a community. We say, 3, *with due knowledge*—that is, not through ignorance or error. This condition is of no ordinary importance. In France, for instance, and perhaps also in the United States, the impression seems to prevail that rectors of parishes, who are "ad nutum episcopi revocabiles," may be removed by the bishop in such manner that in no case can they have recourse to the Holy See. Yet,

[19] Bouix, l. c., p. 357. [20] Ib, p. 358.
[21] Suarez, De Leg., lib. viii., cap. ix., n. 5, pars. 2, p. 294. Neapoli, 1872.
[22] Bouix, l. c., p. 358. [23] Cfr. tamen Suarez, l. c., n. 10, in fine.

it is the general opinion of canonists that these pastors have. "ex jure communi," the right of recourse[24] in all cases. If, therefore, this belief, whether on the part of the bishops or of the clergy, is based upon an erroneous impression, which appears certain, no right of custom would follow from[25] their actions in this respect. 4. The acts must be free—*i.e.*, not extorted by violence or fear; 5, public;[26] 6, the intention of contracting an obligation is the next requisite of custom. This applies chiefly to customs *praeter legem.* Hence, acts of devotion, such as the hearing of Mass on weekdays,[27] going to confession frequently during the year, and the like, do not produce custom having the force of law; 7, the acts must[28] not be interrupted, even by a single contrary action, before the complete formation of custom.

88. II. *On the part of custom itself* (ex parte ipsius consuetudinis) it is required that customs should be good and reasonable; hence, they should not be opposed to the divine or natural law,[29] nor reprobated by canon law, nor give occasion to sin; neither should they be adverse to the common interests of the community, or subversive of ecclesiastical[30] discipline.

89. III. *Ex parte principis.*—The term "princeps" here means the *supreme* lawgiver of a society; the Roman Pontiff is therefore rightly called the "princeps" of the Church.[31] Now, is the consent of the Pope necessary in order that customs may have the force of law? There is no doubt that this consent is, in some sense,[32] indispensable. For, customs are laws, and should therefore, whenever there is question

[24] Bouix, De Princip., p. 359, 360. [25] Cfr. Reiff., lib i., tit. 4, n. 126.
[26] Suarez, De Leg., lib. vii., c. ix., n. 4, and cap. ix., n. 1, 2.
[27] Reiff., l. c., n. 129.
[28] St. Liguori, lib. i., Tract. de Lege, n. 107. Mechliniae, 1852.
[29] Craiss., n. 120. [30] Bouix, l. c., p. 364 seq.
[31] Ib., p. 370. [32] Ib., p. 369.

of common ecclesiastical laws, emanate[33] from or have the sanction of the Holy See.

90. We said: The consent of the Pope is, *in some sense* indispensable. Now, what kind of consent is essential? The Pontiff may give his consent expressly, tacitly, and legally.[34] 1. As to the *express* consent, there can be no difficulty; for it is certain, that as soon as the Pope expressly sanctions a custom, whether it be *praeter* or *contra jus*,[35] such custom obtains the force of law. 2. The Sovereign Pontiff is said to consent *tacitly*, when, though aware of a[36] custom, he does not oppose it. Is this consent sufficient to legalize[37] customs, whether praeter or contra jus? It is, provided the customs in question are reasonable, and the Pontiff may *easily* protest against them. If, however, he cannot[38] *prudently* protest against customs, *contra jus, v.g.*, because he may, by his disapproval, occasion schism, persecutions on the part of the civil power, and the like, such customs do not prescribe against the law. 3. As to the *legal consent*, we cannot do better than describe it in the words of Bouix:[39] "1. Consensus dicitur *legalis*, quando summus Pontifex *ignorat* consuetudinem, et illi non consentit nisi per voluntatem generalem, qua vult omnes consuetudines *rationabiles* et *legitime praescriptas* firmas esse et vim legis habere. 2. Supponitur autem semper in summo Pontifice voluntas haec generalis." Now, is this *consensus legalis* sufficient to legalize customs? The question is controverted; the "sententia multo communior"[40] affirms that this consent is sufficient.[41] Note, 1, the Pope in thus consenting is not cognizant of the custom in question;[42] 2, a custom cannot be approved by "consensus legalis" unless it

[33] Craiss., n. 124. [34] Ib., n. 125. [35] Bouix, De Princip. p. 371

[36] Ib., p. 372, 373. [37] Craiss., n. 126. [38] Bouix, l. c., p. 374

[39] L. c., p. 382. [40] Bouix, l. c., p. 382, 383.

[41] Suarez, De Leg., lib. vii., cap. xiii., n. 6.

[42] St. Liguori, lib. i., De Lege, n. 107, v.

is rationabilis and legitime praescripta. Now, when are customs lawfully prescribed? The answer is contained in the following paragraph.

91. IV. *Ex parte temporis seu diuturnitatis.*—A custom besides being good must be legitime[43] praescripta. Now, what length of time is requisite to constitute legitimate prescription? Before answering, we premise: 1. Customs, which are intrinsically evil, can[44] never obtain the force of law by virtue of prescription; 2, if the Roman Pontiff consents to a custom *personally*, *i.e.*, either expressly or tacitly, there is no need of prescription, since custom, so soon as it obtains this sanction, acquires the force of law.[45] 3. Prescription, therefore, can legalize those customs only of which the Pope is not cognizant, and to which he can, in consequence, give but a legal consent.[46]

92. We now answer directly: 1, With regard to customs *praeter legem*, the space of ten years is sufficient. This is universally[47] admitted; 2, as to customs *contra legem*, there are three opinions.[48] The *first* holds that the space of ten years is always sufficient. The *second* distinguishes between laws once received and those never received.[49] The latter may be abrogated by decennial custom to the contrary; the former, only by one of forty years. The *third* opinion maintains that the space of forty years is always necessary.[50]

93. What follows from this diversity of opinions? 1. Ten years are certainly required; 2, forty years are undoubtedly sufficient; 3, practically speaking, it would seem that no custom can abrogate laws unless it has existed forty years.[51] Is good faith indispensable to prescription against laws? (*contra legem*). The question is controverted.[52]

[43] Bouix, l. c., p. 357. [44] Ib., p. 385. [45] Ib., p. 386. [46] Ib., p. 386.
[47] Reiff., lib. i., tit. 4, n. 91. [48] Devoti, vol. i., p. 38. Leodii, 1860.
[49] Bouix, l. c., p. 388. [50] Craiss., n. 135. [51] Ib., n. 136. [52] Ib., n. 137

## ART. III.

### *What are the Effects of Customs? How are Customs Abrogated?*

94. *Effects of Customs.*—A custom having the requisite conditions may, 1, authentically[53] interpret laws; 2, abrogate pre-existing laws; 3, introduce new obligations or laws; 4, invalidate acts contrary to it.[54]

95. How are customs abrogated? In three ways:

1°. *By subsequent laws.* Here we must distinguish between (*a*) general and particular customs, (*b*) immemorial customs (*i.e.*, customs that have existed a hundred years), and those which are[55] within the memory of men. 1. A subsequent *general* law abolishes all *general* customs opposed to it, even when they are immemorial, and the law does[56] not expressly mention them.[57] We say: *general customs;* for *particular* immemorial customs are not thus abolished, unless the law expressly abrogates every[58] custom, etiam *immemorabilis.* 2. Particular customs, not immemorial, are abolished by subsequent laws containing the clause, *nulla obstante consuetudine.*[59] 3. Bishops, by their laws, can abrogate any particular custom whatever in their dioceses.[60]

96.—2°. *By previous laws.* We ask: Can customs prevail against anterior laws, prohibiting *all* customs to the contrary? The question is controverted.[61] The "sententia probabilior" holds that customs may obtain against a prior law, when the latter merely *prohibits*, but does not *reprobate*, customs[62] to the contrary.

97. *Q.* Are these principles applicable to the decrees of

[53] Reiff., lib. i., tit. 4, n. 158–160. [54] Bouix, l. c., p. 390–393. [55] Ib.
[56] Craiss., n. 139. [57] Reiff., l. c., n. 182. [58] Craiss., n. 140.
[59] Bouix, l. c., p. 394. [60] St. Liguori, lib. i., n. 109.
[61] Bouix, l. c., p 396 seq. [62] Suarez, De Leg., lib. vii, cap. xix., n. 19, 20

the Council of Trent—*i.e.*, can the Tridentine decrees be abrogated by subsequent customs to the contrary?

*A.* There are two opinions: The *first* seems to hold that some disciplinary[63] decrees may be abrogated by customs to the contrary. There is no doubt that in France, and other countries where the Council of Trent is promulgated, some of its decrees were either never reduced to practice or have fallen into desuetude. The *second* opinion maintains that customs can in no case abolish *any* of the[64] Tridentine decrees. In fact, Pius IV., in his bull confirming the Council, expressly declared that its decrees shall have force against any custom whatever that may afterwards be introduced. It would[65] seem that the Holy See, in its decisions, has always adhered to this opinion.[66] The Council of Trent is not, in its entirety, published in the United States.

98. *Q.* What is to be thought of some ecclesiastical customs prevalent in the United States?

*A.* Kenrick[67] replies: "Legibus ecclesiasticis in hac regione plura solent fieri haud consentanea, quae utrum vim consuetudinis assecuta sint, vix audemus dicere. Vehementer commendandos censemus, qui universalis Ecclesiae disciplinam, a primo Concilio Baltimorensi valde commendatam, quatenus rerum adjuncta patiuntur, in omnibus imitantur."

99.—3°. *By customs to the contrary.* For, legitimate customs have the force of laws; now, a prior law is abrogated by a subsequent law of an opposite[68] character. Hence also previous customs may be abolished by subsequent customs to the contrary.

[63] Cfr. Craiss., n. 144.
[64] Bouix, l. c, p. 399–409.
[65] Cfr. Devoti, Prolegom., n. 50.
[66] Cfr. Bened. XIV., Instit. 60, n. 7.
[67] Mor., Tract. 4, pars i., n. 42.
[68] Bouix, l. c., p. 409

# CHAPTER VII.

## ON NATIONAL CANON LAW.

### Art. I.

*Nature and Essential Conditions of National Canon Law.*

100. National canon law (jus canonicum nationale) is defined: The body of ecclesiastical laws peculiar to a nation.[1] By national canon law we do not mean the peculiar ecclesiastical laws of a country or nation which are merely *praeter* jus commune, but those which are at variance with it[2] (contra jus commune). Some authors, however, include in the national canon law those laws also which are *praeter* jus commune.[3]

101. National canon law may obtain in a country,[4] chiefly in three ways: 1. It may be national or exceptional from the very beginning; or it may become national, in that the jus commune, having everywhere else undergone change, remains unchanged in a particular nation.[5] 2. Again, the ecclesiastical law governing a nation may be exceptional from the very beginning in two ways: *a*, by virtue of simple privilege, whereby the general lawgiver exempts a nation from the universal law; *b*, or by virtue of some onerous contract.[6] 3. Again, the privilege of exemption from the common law may be acquired by a nation, either by the express consent of the general superior or by custom having his[7] tacit consent.

[1] Craiss, n. 146. [2] Bouix, De Princip., p. 74. [3] Craisson, Man., n. 148.
[4] Ib., n. 146. [5] Bouix, l. c., p. 74. [6] Ib. [7] Ib., p 75.

102. We ask: Can national canon law be considered legitimate without the consent or authority of the Roman Pontiff? All national canon law is more or less a derogation from the common law of the Church; hence it cannot become lawful unless sanctioned[8] by the Pope. We say, *by the Pope;*[9] for no other power, whether civil or ecclesiastical, can dispense from or repeal in part the universal law of the Church.[10] Not the civil power, as is evident; nor an ecclesiastical power inferior to the Pope, such as councils, whether œcumenical, national, or provincial, for no council is œcumenical save when approved by the Sovereign Pontiff. National councils, far from being competent to alter or annul in part—*i.e.*, in some particular country—the *jus commune* of the Church, are themselves bound to observe it; this holds, a fortiori, of provincial councils, bishops, and other ecclesiastical superiors.[11]

103. For the rest, says Bouix, the Church, out of compassion for the weak, often tolerates in different parts of the Catholic world, customs which are opposed to her general law.[12]

104. *Q.* Can the Sovereign Pontiff annul all national canon law?

*A.* We reply in the affirmative. For, national canon law, whether originating in custom,[13] statutes, privileges, or concordats, depends upon the express or tacit sanction of the Pope. Now, as it is in the power of the Pontiff to give his consent, so also is[14] he at liberty to withdraw it, and thus abolish the "jus canonicum nationale" wherever it may exist.

105. It may, however, be asked whether national canon law, based upon concordats or solemn agreements between

[8] Bouix, l. c., p. 75. [9] Cfr. Craiss., n. 147. [10] Bouix, l. c., p. 76. [11] Ib.
[12] Ib., p. 76, 77. [13] Cfr. Phillips, Kirchenr., vol. v., § 206, p. 95.
[14] Cfr. Bouix, l. c., p. 77.

the Holy See and civil governments, may be annulled by the Pope. There can be no doubt that the Holy See is bound, as a general rule, to observe these agreements.[15] We say, *as a general rule;* for it is commonly held by canonists that the Pontiff may recede from concordats when there are just reasons for so[16] doing. In fact, it is controverted whether concordats are contracts proper or mere privileges. Again, it seems to be commonly admitted that in all agreements entered into by the[17] Sov. Pontiff this condition is understood: Nisi aliud exigat causa gravis et extraordinaria propter bonum commune ecclesiae.

ART. II.

*Of American Canon Law, or of the National Canon Law of the United States.*

106. *Q.* What is meant by American canon law?

*A.* By the national eccl. law of this country we understand the various derogations from the "jus commune," or the different customs that exist among the churches in the United States, and are sanctioned or tolerated by the Roman Pontiff.[18] We say, "are sanctioned or tolerated by the *Roman Pontiff*"; for, as was seen, no national law can become legitimate except by at least the tacit or legal[19] consent of the Pope. Again, the "jus particulare" of a nation always remains subject to the authority of the Holy See in such manner as to be repealable[20] at any time by it. Hence, the *jus nationale*, or the exceptional ecclesiastical laws prevalent in the

[15] Soglia, vol. i., p. 117.
[16] Cfr. Bouix, l. c., p. 78, seq. Cfr. S. Liguori, De Priv., 15.
[17] Craisson, n. 150.
[18] Bouix, De Princip., p. 84. Cfr. Craisson, Man., n. 151.
[19] Cfr. Craisson, Man., n. 151.
[20] Bouix, l. c., p. 82.

United States, may be abolished at any time by the Sovereign Pontiff.

☞ 107. *Peculiar Features of our National Canon Law.*—The general character of the national canon law of the United States, as contained in the Plenary Councils of Baltimore and in the decrees of the Provincial and Diocesan Synods of this country, is that of a missionary country—*i.e.*, of a country which is not yet converted to the faith. Now, in missionary countries the disciplinary organization or *régime* of dioceses is naturally imperfect and inchoative in the beginning, and only develops itself gradually, in proportion as the faith spreads and the Church flourishes. As a rule, the S. C. de P. F. at first appoints for such a country a priest in the capacity of *Praefectus Apostolicus.* Afterwards, when the diocesan organization is more advanced, it appoints a *Vicarius Apostolicus,* who is made a titular bishop, *i.e.*, a bishop *in part. inf.* Lastly, when the diocesan organization has progressed farther, bishops with residentiary sees are appointed. Still, even these bishops and their dioceses remain under the sole direction of the S. Congr. de Prop. Fide, and retain their missionary character until the diocesan *régime* becomes perfected to such a degree as to be in full conformity with the sacred canons.

108. The organization of *parishes* in missionary countries progresses in a similar gradual manner. At first there will be simple missionaries travelling from place to place, and gathering together small and scattered congregations which will be nothing but missions. As these missions or congregations grow and prosper, they assume the character of quasi-parishes with fixed limits, and the missionary becomes a resident rector or *quasi-parochus,* and should not be removed by the bishop without sufficient cause. Finally, when the quasi-parish has acquired a stable existence and become possessed of sufficient income for the maintenance of divine worship, whether in the form of pew-rents, collec-

tions, etc., or of other sources, it is raised to the dignity of a parish in the full and canonical sense of the term, and its rector becomes a canonical parish priest proper. The decrees of the respective Plenary, Provincial, and Diocesan Synods regulating this peculiar condition of things constitute the national canon law of a missionary country.

When a diocese and its parishes have thus become properly organized, it is transferred by the Pope from the control of the Propaganda to that of the other respective Sacred Congregations, especially of the bishops and regulars and of the Council, and thus it ceases to be a missionary diocese and falls under the general disciplinary law of the Church.

109. The missionary condition of the Church in the United States is fast passing away, except so far as concerns some few dioceses of the far West and extreme South. In the greater portion of this country, magnificent churches, capacious schools, and fine parochial houses have sprung up on all sides. These parishes have, as a rule, an abundant income in the shape of pew-rents and collections or donations. It is indeed no exaggeration to say that our parishes are, generally speaking, in a more flourishing condition than in the Catholic countries of Europe. No wonder, then, that our wise and glorious Pontiff, Leo XIII., happily reigning, has, through the *Third Plenary Council of Baltimore*, caused such laws to be made, especially respecting diocesan consultors, the election of bishops, the appointment and removal of a number of rectors, as bring us nearer to the general discipline of the Church.

# CHAPTER VIII.

## ON PRIVILEGES (DE PRIVILEGIIS).

### ART. I.

### *Nature, Division, etc., of Privileges.*

110. A privilege is defined: "Privata lex aliquid speciale concedens contra vel praeter jus."[1] A privilege is, 1, a *law* (lex), not in the sense that those who receive a privilege are also bound to make use of it, but because others are prohibited from placing any obstacles in the way of the use or exercise of privileges.[2] 2. A privilege is termed a *private* law (lex *privata*), not in the sense that a favor is granted to *one person* only, but because by privileges a *special* right or favor is by a particular law conferred, either upon an individual or a community. This *special* right may be either *contra* or *praeter* jus commune.[3]

111. Privileges being *private* laws are of force without being solemnly promulgated. Hence, in order to cause other parties to respect a privilege, it is sufficient to inform them of it privately, either by showing them the rescript or in some other manner.[4]

112. Privileges must be made known to ordinaries, 1, even when this is not demanded by them, if the privilege contains the clause "certioratis locorum ordinariis"; also when there is question of publishing new indulgences; 2,

[1] Ferraris, V. Privilegium, art. i., n. 1.

[2] Reiffenst., lib. v., Decretal, tit. xxxiii., n. 3. Edit. Paris, 1869.

[3] Suarez, De Leg., lib. viii. cap. i., n. 3, 4.

[4] Craisson, Man., n. 157

on demand of ordinaries those privileges must be exhibited which relate to the exemptions of religious institutes, provided these exemptions are not sufficiently known.

113. A privilege differs from a dispensation in this, that the latter, being merely an exemption[5] from the universal law, or a suspension of it in a particular case, is not a law, not even a "lex privata,"[6] and is therefore not necessarily permanent.[7] A privilege, moreover, is distinguished from a mere permission (licentia);[8] the latter being given only for a few acts.[9]

114. *Division.*—Privileges are divided: 1, into privileges "contra jus"—*v.g.*, exemption from the jurisdiction of the ordinary, and into privileges "praeter or ultra jus"—*v.g.*, the[10] power to absolve from reserved cases, to grant dispensations, etc.; 2, privileges are real, personal, and mixed. A "privilegium reale" attaches proximately and immediately to a thing, place, office, or dignity; it passes to the successors in[11] office. Kenrick gives an instance of a real privilege: Sic privilegium est reale, altaris cujusdam, quod indulgentia plenaria applicabilis defunctis a celebrante in eo impetretur.[12] A "privilegium personale" is one that is conferred directly upon a certain person, "ratione sui"—*i.e.*, in view of his merits;[13] it is not transmissible if attached to an individual, but if attached to a moral person—*i.e.*, a community—it continues[14] in force, per se, so long as the community itself exists. "Privilegium mixtum" is partly personal and partly real.[15]

115.—3. Some privileges are contained in the body of the canon law (privilegia in corpore juris clausa); others

[5] Phillips, Lehrb., § 92, p. 176. [6] Ib. [7] Craisson, l. c., n. 159. [8] Ib.
[9] St. Liguori, De Priv., n. 1.
[10] Ferraris, V. Privilegium, art. i., n. 3. Genuae, 1768
[11] Reiff., lib. v., tit. xxxiii., n. 12, 13. [12] Mor., Tract. 4, pars. i., n. 62.
[13] Suarez, De Leg., lib. viii., cap. iii., n. 2. Neapoli, 1872.
[14] Bouix, De Jure Regular., tom. ii., p. 75. Paris, 1857.
[15] Reiff., l. c., n. 14.

are[18] conferred by special letters—*v.g.*, bulls, rescripts, indults (privilegia extra corpus juris).

116.—4. A privilege is *gratiosum* when given, not in view of any merits;[17] *remunerativum*, when bestowed as a reward or recompense; *conventionale*, or *purum*, according as it is based upon an agreement, or not so[18] based.

117.—5. Privileges are *perpetual* if given without limit of time—*i.e.*, for[19] an indefinite period; they are *temporary* when bestowed for[20] a certain period—*v.g.*, ten years.

118.—6. Privileges are *per se* and *ad instar*. Privilegia ad instar are[21] those which are granted on the model of other privileges.

119.—7. Privileges are named *communia* when they are bestowed upon communities; *privata*, when given to individuals. A person may renounce his own[22] private privilege, but he cannot give up a privilege pertaining to a community of which he is a member. Thus a clergyman is not at liberty to[23] disclaim the benefit of clergy (privilegium fori) where it is in force.[24]

120.—8. Privileges are usually granted by the Pope in *writing* (litteris); sometimes also *orally* (privilegia vivae vocis oraculo concessa). 9. Again, the Pope bestows privileges either motu proprio[25] or ad instantiam.

121. *Q.* Who can bestow privileges?

*A.* Only those who have the power to enact[26] laws. Hence, the Pope alone may everywhere concede privileges contra jus. Bishops may confer privileges, by which exemption is granted from[27] statutes made by themselves or their predecessors.

[16] Ferraris, V. Privileg., art. i., n. 4. [17] Craisson, Man., n. 160.
[18] Ib. [19] Reiff., lib. iv., tit. xxxiii., n. 18. [20] Phillips, Lehrb., § 92, p. 176.
[21] Reiff., l. c., n. 20. [22] Bouix, De Jur. Regular., tom. ii., p. 75.
[23] Cfr. Blackstone, bk. iv., ch. 28.
[24] Cfr. Kenrick, tract iv., pars. i., n. 65.
[25] Phillips, l. c. [26] Craisson, l. c., n. 161. [27] Reiff., l. c., n. 26.

122. Privileges are acquired, 1, by concession of the proper superior;[28] 2, by lawful custom when there is question of a community; by prescription in the case of private persons;[29] 3, among regulars, by communication.[30]

123. As a rule, privileges, though not containing a derogatory clause, may nevertheless derogate from the common law of the Church;[31] but when they are to restrict the jurisdiction of the ordinary, the parties interested should be heard in their own[32] behalf, except where the Pope directs otherwise.

124. Privileges, in order to be valid, need not, ordinarily speaking, be given *in writing*.[33]

125. Does a privilege properly conceded take effect as soon as it is conferred, or only when it comes to the knowledge of the privileged person? The question is debated. The more probable opinion appears to be that which thus distinguishes:[34] If the privilege is bestowed *motu proprio*, and not at the request of the privileged party, it does not *usually* take effect before it has been brought to the notice of, and accepted by, the privileged person.[35] If, however, it is conceded at the solicitation of the privileged party (ad preces privilegiati), it takes effect *immediately* upon being granted.[36] Hence, where the Tridentine decree *Tametsi* obtains, a priest having written to the bishop or parish priest for[37] permission to bless a marriage can assist validly[38] at the marriage, even before receiving an answer, provided the permission was[39] really given before the ceremony took place. The same holds true of all cases where dispensations or other faculties are asked from the bishop.

[28] Reiff., lib. v., tit. xxxiii., n. 38. [29] Craiss., n. 161.
[30] Suarez, De Leg., lib. viii., cap. vii., n. 4, 5. [31] St. Liguori, De Priv., n. 2.
[32] Craiss., n. 162. [33] Ib., n. 163. [34] Bouix, De Jure Regular., vol. ii., p. 76.
[35] Cfr. Reiff., l. c., n. 42–46. [36] Ib., n. 46–48. [37] Ib., n. 48.
[38] We say *validly*; for he cannot do so *lawfully* except for sufficient reasons (Cfr. Reiff., l. c., n. 48.) [39] Bouix, l. c., p. 76.

The following practical rule of conduct, observable of course also in the United States, may therefore be laid down: When a priest has written, or sent a messenger, to the bishop or chancellor for a dispensation or for faculties to absolve from *reserved cases*, he may, upon reasonable cause, marry the parties for whom he asked the dispensation, or impart absolution from reservations, even before he receives the answer of the bishop or chancellor, provided he has reason to believe that the faculty was really granted at the time.[40]

126. *Confirmation of privileges.*—The renewal (*innovatio*) or rather[41] confirmation (*confirmatio*) of privileges *aliud non est quam corroboratio privilegii legitime jam habiti.*[42] Under certain circumstances, privileges already possessed by a person must be renewed, or, rather confirmed.[43] They are confirmed in two ways: 1, in forma communi; 2, in forma speciali—*i.e.*, ex certa scientia.[44] The effects of each of these confirmations are given in detail by Reiffenstuel.[45]

127. *The use of privileges.*—As a rule, no one is bound to make use of his privileges.[46] We say, as a rule; for there are several exceptions—*v.g.*, if the privilege redounds to the bonum commune; or if it is a privilegium *reale—i.e*, attached

[40] We must not be misunderstood. 1. We do not affirm that it is allowed to make use of *presumptive* dispensations. For, dispensations are presumptive when it is presumed that the bishop, if applied to, would readily grant them, but not when he is actually asked for them, as in our case. 2. Nor do we hold that a priest can, as a rule, absolve *cum jurisdictione dubia, in dubio facti*—*v.g.*, when he is in doubt whether the bishop has given him faculties in the case; for, in our case, the petitioner, though not officially informed, is nevertheless morally certain from other sources—*v.g.*, because he knows that the letter reached the bishop or chancellor and that the faculty is never refused—that the bishop has granted the faculties. (Cfr. Gury., Edit. Ballerini, vol. i., n 118; vol ii., n. 549.)

[41] Cfr. Phillips, Lehrb., p. 176. [42] Reiff., l. c., n. 73. [43] Phillips, l. c.

[44] Bouix, l. c., p. 78. [45] L. c., n. 77–82. [46] Craiss., n. 166.

**to a place,** dignity, or state, such as privileges of bishops and regulars; in these and several other cases, privileged persons cannot renounce their[47] privileges.

128. *Q.* How are privileges to be explained?

*A.* We must distinguish between **extensive and comprehensive** interpretation. The former is that by which the meaning of a law is extended to other cases and persons, beyond the wording of the law, and at the same time beyond, though not against, the intention of the lawgiver. The latter is that by which the meaning of a law is extended beyond its words, but not beyond the intention of the lawgiver.[48] Again, privileges may be interpreted by the law-maker himself (interpretatio auctoritativa, definitiva) or by private doctors[49] (interpretatio doctrinalis).

Having premised this, we now answer: Privileges, which are "contra jus commune," and prejudicial to other parties,[50] must be strictly construed; except, however, 1, when they are in the Corpus juris; 2, or given "motu proprio"; or 3, bestowed upon religious communities.[51]

129. *Q.* How do privileges lapse?

*A.* 1. By revocation (revocatione). The Sovereign Pontiff can, where the good of religion so requires, revoke privileges. The Council of Trent revoked many privileges—their[52] number having become too great. Privileges may be validly revoked[53] even without any cause; but when they were conceded as a recompense, or have the force of[54] contract, a just cause is required. Revocation may be express or tacit. Express revocation is either special or general. General revocation is subdivided[55] into ordinary and extraordinary. 2. The Pope is especially free to revoke privileges when they are granted conditionally—*i.e.*, subject to

[47] Craiss., n. 166. [48] Bouix, l. c., p. 78. [49] Reiff., l. c., n. 95, 96.
[50] Ferraris, V. Privileg., art. ii., n. 27. [51] Phillips, Lehrb., § 92, p. 177.
[52] Ib. [53] Craisson, Man., n. 169. [54] Reiff., lib. v., tit. xxxiii., n. 128
[55] Bouix, De Jure Regular., vol. ii., p. 80.

revocation. Privileges thus conditioned lapse at the death of the [56] grantor, when they are given "usque ad beneplacitum nostrum"; but they continue to be of force even after the death of the grantor, if they are bestowed "usque ad apostolicae sedis [57] beneplacitum," or with the words, "donec revocavero." 3. Personal privileges lapse with the death of the person [58] privileged. 4. Privileges may also lapse, by being expressly or [59] tacitly given up or renounced (renuntiatione). 5. Privileges are lost, and that sometimes ipso facto, by [60] being abused. Clerics, for instance, living like laymen, are deprived of the benefit of clergy.[61]

[56] Phillips, l. c.
[57] Ib., p. 177.
[58] Ib.
[59] Ib., l. c., p. 177.
[60] Ib.
[61] Reiff, l. c., n. 176–180.

# CHAPTER IX.

## ON THE HISTORY OF THE COMMON CANON LAW; OR ON THE HISTORY OF THE CANON LAW OF THE ENTIRE CHURCH.

### ART. I.

### *Of Collections of Canons in General (De Collectionibus Canonum in Genere.)*

130. Down to the second, and perhaps third, centuries of the Church, the Sacred Scriptures and the "Rules laid down by the Apostles," or apostolic [1] men, constituted the law of the Church in the East as well as in the West.

131. Later on, however, numerous canons were framed by councils. The canons of councils and the decrees of Sovereign Pontiffs were at various times collected into one code [2] and arranged in a methodic manner. These codes were named Collectiones Canonum. The history [3] of canon law, therefore, may [4] be appropriately called "History of the Collections of the Sacred Canons," or also "History of the Sources [5] of Canon Law."

132. In order to form a correct idea of the canons of the Church, it is necessary to know the nature [6] both of the different collections and of the canons themselves. We shall therefore say a few words on each.

[1] Bouix, De Princip., p. 425.
[2] Soglia, vol. i., p. 86.
[3] Cfr. Devoti, Prolegom., cap. iv., § 51. Leodii, 1860.
[4] Walter, Lehrb., § 61.
[5] Phillips, vol. iv., § 167.
[6] Salzano, Diritto Can., vol. 1., p. 59.

133.—I. *Character of the various Collections.*—The great utility of these collections consisted[7] in this, that the canons which were scattered through many volumes were grouped together and exhibited to the view of the student at a glance. Moreover, these collections, when made by public authority, served[8] to distinguish the genuine from the spurious canons. A few observations in regard to these collections in general will suffice.

134.—1. In matters of faith there must be unity throughout the whole Church. For, as Tertullian says: "Regula fidei una omnino est, sola, immobilis, et irreformabilis." But, in matters of discipline,[9] different practices may lawfully exist in the various parts of the Church; in other words, national canon law may lawfully obtain among the different nations of Christendom. Hence,[10] some churches—*v.g.*, the Oriental, the African, the Spanish—had their collections, which contained not only the canons of the universal Church, but also those of the respective particular church.

135.—2. The mere placing together of canons in one collection[11] adds, of itself, no weight to the canons themselves. Hence, canons compiled in a code by *private* authority have no other authority than what they would have[12] out of the collection. If canons, therefore, are to have any authority "ratione collectionis," the collection itself must be made, or at least approved, by *public* authority. Collections, therefore, of canons when made or received[13] by the authority of the Holy See or œcumenical councils, are binding on all the faithful; but when made by authority of the bishops of a nation or country, on the faithful only of such country.

136.—3. Finally, canons or collections are apocryphal or supposititious[14] when not ascribed to the proper author or when interpolated or altogether spurious.

[7] Soglia, vol. i., p. 86. [8] Salzano, l. c., p. 58, 59. [9] Ap. Soglia, l. c., p. 86
[10] Ib. [11] Ib., p. 87. [12] Salzano, l. c., p. 59.
[13] Soglia, l. c. [14] Ib.

137.--II. *Nature of the Canons themselves.*--As the subject-matter of canon law is threefold, namely, faith, morals, and discipline, so there are three kinds of canons: 1, canones fidei or canones dogmatici; 2, canones morum; 3, canones disciplinae.[15]

138.—1. *Canones dogmatici* are those "in quibus aliquid credendum proponitur." Two things are required to constitute a dogmatic canon: 1, that the truth enunciated in the canon be revealed; 2, that it be proposed[16] by the Church. As to the marks by which canons are known to be dogmatic, see Soglia.[17]

139.—2. *Canones morum* relate to those things "quae in humanis actibus, propter se, honesta sunt vel turpia, adeoque vel agenda vel omittenda."[18] Many canons of this kind are found in the Decretum Gratiani—*v.g.*, in regard to contracts, oaths, adulteries, thefts, usuries, and the like. As these canons either enjoin what is intrinsically good, or prohibit[19] what is intrinsically evil, they can never be abrogated.

140.—3. *Canones disciplinares* are those "qui feruntur ad puritatem fidei, honestatem morum, divinique cultus sanctitatem tuendam."[20] To this class belong those canons: 1, which decree censures and other ecclesiastical penalties against heretics, adulterers, etc.; 2, or lay down the precept of paschal communion; 3, or also regulate the appointment to ecclesiastical offices; 4, or regard the administration of the sacraments, sacred rites, and the like.[21] We observe here that although canons may be, according to Cardinal Soglia, divided into three kinds, as was just seen, they are nevertheless more usually divided into two kinds only, namely, into dogmatic and disciplinary.[22]

[15] Soglia, l. c., p. 15 § 8.
[16] Ib., § 9, p. 16.
[17] Ib., p. 10.
[18] Ib., vol. i., p. 19.
[19] Ib., p. 20, § 12.
[20] Ib., § 13, p. 20.
[21] Ib. p. 21
[22] Ib., p. 15, § 8.

## Art. II.

### *Of the State of Canon Law in the Oriental Church—Eastern Collections.*

141. The chief collections of canons of the Eastern Church are:

I. *The celebrated and very*[23] *ancient Collection referred to in the Council of Chalcedon* (451).—In *actione 4a and 11a* of this Council, we read that certain canons were read, by order of the Council,[24] out of a code or book of canons. There is no doubt, therefore, that a collection existed at the time; its compiler, however, is entirely unknown. It contained 166 canons, enacted respectively[25] by the Councils of Nice, Ancyra, Neo-Caesarea, Gangra, Antioch, Laodicea, and Constantinople. Phillips[26] holds that this collection had no official character and was not recognized by the Council of Chalcedon as having authority in the entire Church. Salzano,[27] however, maintains that, although the collection comprised the canons of the Eastern Church only, it was nevertheless approved by the entire Church in the Council of Chalcedon.

142.—II. *The Collection of John, surnamed Scholasticus.*— This author added to the above collection the canons of the Apostles, of the Councils of Sardica, Ephesus, Chalcedon, also 68 canons taken from the Epistles of St. Basil.[28] The collection is divided into fifty titles, treating first of bishops, then of priests, deacons, etc. After John was made Patriarch of Constantinople (A.D. 564) he compiled[29] another collection, in which were grouped together not only the canons

[23] Soglia, vol. i., p. 92. [24] Cfr. Bouix, De Princip., p. 415, 416.
[25] Soglia, l. c., p. 93. [26] Kirchenr., vol. iv., § 169, p. 20. Ratisbon, 1851.
[27] Diritto Can., vol. i., p. 6[illegible] [28] Soglia, l. c., p. 93.
[29] Bouix, De Princip., p. 420, [illegible].

of the Church, but also the laws of the empire which had any relation to the laws of the Church; this collection was consequently termed *Nomo-Canon.*[30]

143.—III. *Collection of Photius, Pseudo-Patriarch of Constantinople.*—Photius compiled his Nomo-Canon in 858, and divided it[31] into fourteen titles. It contains the seeds of the Greek schism.

144.—IV. *Commentaries* on the Greek[32] code were written by the monk Zonaras in 1120, and by Theodore[33] Balsamon in 1170.

145.—V. *Synopses or Abridgments* of the code were made by Simeon, the master and logothete, by Aristenus, Arsenius (1255), Harmenopulus (1350), and others.[34]

146.—VI. *State of Canon Law in the Greek and Russian Church at the present day.*—The collection of Photius, the commentaries of Zonaras and Balsamon, and, finally, the latest enactments of the various patriarchs, constitute,[35] so to say, the body of laws by which the Greek Church is governed at present. The Russian Church is, at present, ruled chiefly by the decrees of the so-called "Holy Synod"[36]—a permanent senate instituted by Peter the Great in 1721.

## Art. III

### *History of Canon Law in the Latin Church—Collections of Dionysius Exiguus, of Isidore Mercator, of Gratian, etc.*

147. The collection or code of canons of the Councils of Nice and Sardica,[37] which had been translated into Latin, was for a long time—*i.e.*, down to the sixth century—the only collection publicly[38] received in the Western or Latin

[30] Salzano, l. c., p. 64. [31] Bouix, De Prin., p. 422. [32] Soglia, vol. i., p. 94.
[33] Walter, Lehrb., § 73, p. 125. [34] Ib., § 74. Cfr. Salzano, vol. i., p. 64.
[35] Ib. [36] Ib. [37] Devoti, Prolegom., n. 57.
[38] Bouix, De Princip., p. 426.

Church. It is true that already prior to the sixth century there were Latin translations of the entire Greek code or collection of canons, namely, the Isidoran and the Prisca.[39] But neither obtained public authority before the period in question.[40]

148. The chief collections of the Latin Church are the following:

I. *Collection of Dionysius Exiguus in the Sixth Century.*—Devoti[41] says of Dionysius: "Fuit hic Dionysius instituto monachus, natione Scytha, moribus et domicilio Romanus, doctrina vero et vitae integritate praeclarus." He came to Rome after the death of Pope Gelasius († 496) and died in 536[42] or 540.[43] It is matter of controversy whether any code of canons of the Latin Church existed previous to the Dionysian collection.[44]

149. The collection of Dionysius is divided into two parts: one contains the canons of councils; the other, the epistles of the Roman Pontiffs.[45] The first part embraces the canons of the Apostles, the canons of the Councils of Nice, Ancyra, Neo-Caesarea, Gangra, Antioch, Laodicea, Constantinople, Chalcedon, and of the Councils of Africa;[46] the second, the decretal epistles of the Sovereign Pontiffs from Siricius to Anastasius II.[47]

150. This collection attained to great influence throughout almost the entire Church, though it had no public authority or official character. It was afterwards, however,[48] to a certain extent, approved by the Apostolic See, as we learn from the fact that Pope Adrian I. presented it, with some additions, to Charlemagne, in order that it might serve as the code of laws for the churches of the empire.[49]

[39] Devoti, l. c., n. 58.
[40] Cfr. Bouix, l. c., p. 431.
[41] L. c., n. 59.
[42] Phillips, vol. iv., p. 35.
[43] Darras, vol. ii., p. 138.
[44] Soglia, vol. i., p. 95.
[45] Craiss., n. 176.
[46] Bouix, l. c., p. 436.
[47] Devoti, l. c., n. 60.
[48] Ib., n. 61.
[49] Soglia, vol. i., p. 95.

151. Other collections of less note are: 1, Collection of St. Martin, Archbishop of Braca, who died in 583; 2, Breviatio or indiculum of canons by Ferrandus, deacon of Carthage (ann. 547); 3, Breviarium or collection of Cresconius, an African bishop, who flourished in 697.

152.—II. *Collection of Isidore Mercator in the Ninth Century.*—On this head we merely sum up the arguments given in our "Notes."[50] 1. This collection was regarded as genuine by all canonists and theologians for seven hundred years —that is, from the ninth to the fifteenth century.[51] 2. The celebrated Cardinal Nicholas of Cusa, usually called Card. Cusanus († 1464), was the first who questioned its authenticity. That the Isidoran collection is spurious,[52] at least in part, there can be no doubt at the present day.[53] 3. France is assigned as the place whence probably it was issued; it came into use between the years 829 and 857. 4. It wrought no material change in the discipline of the Church;[54] for even those documents which are spurious only reflected such doctrines as were universally believed at that period.[55]

153. Collections of less importance[56] are: 1, Collection of Regino in 906; 2, collection of Burchard, Bishop of Worms, which appeared between the years 1012 and 1023; 3, collection of Anselm of Lucca († 1086); 4, of Cardinal Deusdedit, which was dedicated to Pope Victor III. (1086–1087); 5, of Yvo of Chartres († 1117); 6, Liber Diurnus, which is thus described by Bouix:[57] "Romani *Diurni* nomine appellatur codex in quo, praeter formulas scribendi, continentur insuper ordinationes Summi Pontificis, professiones fidei, privilegia, praecepta," etc. This Liber Diurnus was probably compiled soon after the year 714, and served as a chancery book.[58]

[50] Soglia, vol. i., p. 31–38.
[51] Ib., p. 97.
[52] Craiss., n. 177.
[53] Devoti, Proleg., n. 68.
[54] Phillips, vol. iv., p. 87, 88
[55] Bouix, De Princip., p. 456, 457.
[56] Phillips, l. c., p. 128–132.
[57] L. c., p. 464.
[58] Walter, p. 183. Bonn, 1839.

154.—III. *Collection of Gratian in* 1151.—Gratian was born at Chiusi, in Tuscany, and became a Benedictine monk at[59] Bologna, where, in the year 1151, he issued his celebrated work, now commonly known as the *Decretum Gratiani.* It is not simply a collection, but a scientific and practical treatise on canon law.[60] The chief object of the work seems to have been to explain and reconcile the various *seemingly* contradictory canons as they existed in the collections of that period.[61]

155. The *Decretum* is made up of texts from the Sacred Scriptures, of fifty canons of the Apostles, of canons of councils, of constitutions of Roman[62] pontiffs, etc. It is divided into three parts:[63] The first treats of ecclesiastical persons and offices, and consists of 101 *distinctiones*, which are divided into chapters or canons; the second, of ecclesiastical judicature, and is composed of 36 *causae*, each of which is divided into *quaestiones*, which in turn are subdivided into canons or chapters; the third, of the liturgy of the Church, and is made up of five *distinctiones.* More than a hundred canons are named *Paleae*, a title probably derived from the name *Pauca Palea*, who was a disciple of Gratian, and is supposed to have inserted these *Paleae* into the *Decretum.*[64]

156. Gratian's collection obtained great authority and superseded all other collections; yet it remained a *private* compilation, was never clothed with an official character, or approved by the Holy See.[65] Mistakes abound in it, the author drawing on and copying from the collections then extant and containing inaccuracies.[66] Corrections of the Decretum were made by order of Popes Pius V. and Gregory XIII.

Minor collections of this period are: That of Cardinal[67]

[59] Devoti, l. c., n. 73. [60] Walter, l. c., p. 193. [61] Phillips, l. c., p. 142. [62] Craiss., n. 184. [63] Cfr. Phillips, l. c., p. 152–154. Cfr. Devoti, l. c., n. 74. [64] Phillips, l. c., p. 161. [65] Phillips, l. c., p. 149. [66] Devoti, Prolegom., n. 79. [67] Ib., p. 174.

Laborans (1182); Collectio Prima, by Bernard of Pavia,[68] in 1190; Collectio Secunda, by Gilbert,[69] an English writer (1203); Collectio Tertia, Quarta, and Quinta.[70]

157.—IV. *Collection of Decretals under Gregory IX.*—Pope Gregory IX. ordered a code to be published, in which the *corpus* of the entire ecclesiastical law should be suitably arranged. Whatever was[71] useless and confused or ambiguous was to be retrenched or corrected. The accomplishment of this task was entrusted to St. Raymond of Pennafort, who began the work in 1230 and finished it in the year 1233.[72]

158. The whole work is divided into five books. The first treats of ecclesiastical judicature or of prelates; the second, of civil lawsuits; the third, of ecclesiastical matters brought before the episcopal forum, in causis civilibus; the fourth, of betrothals and marriages; the fifth, of judicial proceedings in criminal matters, of censures and the like. This collection is authentic, and has the force of law in every[73] particular; the same holds of the *Liber Sextus*, the *Clementinae*, the *Extravagantes*, both *communes* and of John XXII.[74]

159. Of the other collections of decretals, we may mention: 1. The *Liber Sextus*, or Sextus Decretalium, which was[75] published in 1298 under the auspices of Pope Boniface VIII. 2. The *Clementinae*,[76] or collection of decretals by Pope Clement V. (1305–1314). 3. The *Extravagantes* of John XXII. (1316–1334), and the *Extravagantes* communes. 4. *The Bullary of Benedict* XIV., which contains the constitutions of that Pope and is of public authority. 5. The *Bullarium magnum Romanum*.[77] This collection or code, made up originally of fourteen volumes, the last of which was pub-

[68] Phillips, l. c., p. 211. [69] Ib., p. 223. [70] Craiss., n. 185

[71] Bouix, De Princip., p. 484.

[72] The Collection begins with the decretals of Alexander III., thus forming a continuation of Gratian's work, which was only carried down to that period. (Cfr. Darras, vol. iii., p. 360.) [73] Bouix. De Princip., p. 485, 486.

[74] Craiss., n. 186, 187. [75] Phillips, vol. iv., p. 356. [76] Ib., p. 387. [77] Ib., p. 485.

lished in 1744, has of late been continued in Rome (1839). Bouix[78] says of it: "Valde imperfecta est, et majori adhuc negligentia hodie Romae continuatur." It is merely a private collection, and therefore has no authority as a collection—*quatenus collectio.*

160.—V. *Corpus Juris Canonici; its component parts and authority at the present day.*—The term *corpus,* when used in reference to laws, ecclesiastical as well as civil, means a *collection* of laws that forms, so to say, a whole.[79] At present the Corpus Juris Canonici consists of, 1, the "Decretum Gratiani," to which are annexed the Penitential canons and the canons of the Apostles; 2, the five books of the decretals of Gregory IX.; 3, the Liber Sextus of Boniface VIII.; 4, the Constitutiones Clementinae; 5, the Extravagantes of John XXII.; 6, the Extravagantes Communes. "His sex partibus," says Bouix,[80] "expletur et clauditur Corpus Juris Canonici."

161. *Authority of the Corpus Juris Canonici at the present day.*—We cannot do better than give the words of Bouix[81] on this point: "Codicem autem illum juris canonici dictum, prae manibus habeat, perpetuoque, *nostris etiam temporibus* evolvat necesse est, quisquis in jurisprudentia canonica, non vult penitus caecutire. Licet enim multa immutaverint tum Concilium Tridentinum, tum novae Constitutiones Pontificiae, innumera tamen immota prout in Corpore Juris Canonici extant remansere."

162. *Q.* What are the chief matters to which the Corpus juris canonici applies at the present day?

*A.* 1. The *Corpus* still has the force of law in matters relating to the ecclesiastical judicature, to divine worship ecclesiastical[82] doctrine, and discipline. 2. It is, moreover the code used at present in the schools of learning[83] and in the ecclesiastical forum. 3. Besides, canonists have for

[78] Phillips, l. c., p. 489.
[79] L. c., p. 403, 404.
[80] L. c., p. 489.
[81] Ib., p. 490.
[82] Ib., vol. iv., p. 412.
[83] Devoti, Prol., p. 19.

many centuries taken their arguments, to a great extent, from the *Corpus Juris;* these arguments, therefore, can be understood fully only by those[84] who are familiar with the *Corpus* itself.

163.—VI. *The Jus Novissimum.*—Speaking in general, the Jus Novissimum consists of laws published from the time the *Corpus Juris Canonici*[85] was closed—*i.e.*, since the *extravagantes* were inserted down to the present day.

164. This *Jus*, speaking in particular, is principally made up of these parts: 1. *The constitutions or decretals of the Roman Pontiffs.* No authentic collection has been made of the various constitutions or laws[86] made by the Roman Pontiffs since the close of Corpus Juris. The only exception in this respect is the Bullary of Benedict XIV., which is of public authority. Of the various *private* collections that are extant, the *Bullarium Magnum Romanum*, which, however, is replete with errors, holds the foremost rank. 2. The *regulations* by which the Apostolic chancery is governed (*regulae cancellariae Romanae*). 3. The *decisions* of the congregations or committees of cardinals. 4. *The decrees of the Council of Trent*, which, in fact, form the chief portion of the *Jus Novissimum.*[87] 5. Finally, the decrees of the Council of the Vatican.[88]

[84] Bouix, l. c., p. 490. [85] Ib., p. 495. [86] Ib., p. 496. [87] Ib.

[88] Proposals were made at the Council of the Vatican by a number of bishops to have a committee appointed, consisting of the most eminent canonists, who should revise the *Corpus Juris Canonici*, or rather prepare a new one, omitting whatever, owing to our changed times, was no longer applicable, and report the result of their labors to the Vatican Council or the next oecumenical council. (Martin, Arbeiten, p. 106; id., Doc., p. ii. sect. ii, 1, 3, 4, 5, 14.)

# CHAPTER X.

## HISTORY OF PARTICULAR OR NATIONAL CANON LAW—HISTORY OF CANON LAW IN THE UNITED STATES.

165. So far, we have discoursed on the history of the canon law of the entire Church, or of the common canon law. We now come to the historical phase of canon law in the United States.

166. Decrees of provincial and national councils form one of the sources of our national canon law. The first council, or rather diocesan synod, ever held in the United States was that of Baltimore in 1791. Its acts and decrees were republished by order of the First Provincial Council of Baltimore, and are therefore authentic as a collection.[1] The First Provincial Council of Baltimore was held in 1829,[2] the second in 1833,[3] the third in 1837, the fourth in 1840, the fifth in 1843, the sixth in 1846, the seventh in 1849. To these councils *all* the bishops of the United States were called; in this respect, therefore, they might be styled national or plenary councils. They are, however, usually, and correctly so, named provincial councils, since but one ecclesiastical province existed at the time, and they were convened by the metropolitan as such but not by a Papal delegate.

167. By Apostolic briefs of July 19, 1850, the Sees of New Orleans, Cincinnati, and New York were raised to the dignity of metropolitan churches. St. Louis had been erected into an Archiepiscopal See, July 20, 1847, though suffragans

[1] Conc. Prov. Balt., p. 5, 6. Balt., 1842.
[2] Ib., p. 29.
[3] Ib., p. 57, 91, 92.

were assigned it only in 1850. The United States were thus divided into six ecclesiastical provinces, including[4] the Province of Oregon, erected July 12, 1846.

168. The First National Council of the United States was held at Baltimore in 1852 under the[5] presidency of Archbishop Kenrick, as Papal delegate. Six archbishops and twenty-six bishops took part in its deliberations. The Propaganda,[6] by letters of September 26, 1852, approved its decrees. The Second National or Plenary Council of Baltimore met in 1866, and was presided over by Archbishop Spalding, as Papal delegate. Its decrees were[7] revised by letters of the Propaganda, dated January 24, 1868.

☞ 169. The *Third Plenary Council of Baltimore*, which is perhaps the most important of all our councils, was solemnly opened on the 9th of November, 1884, and closed December 7th of the same year. It was attended by fourteen archbishops and sixty-two bishops or their procurators. It was revised by decree of the S. C. de Prop. Fide, dated Sept. 21, 1885, and was promulgated by His Eminence Card. Gibbons, Archbishop of Baltimore and Apostolic Delegate, on the Feast of the Epiphany, 1886. Its decrees became obligatory all over the United States, on and from the day of this promulgation.[8]

170. *Q.* What is meant by the confirmation of councils in forma communi and in forma specifica?

*A.* 1. Suarez[9] affirms confirmation *in forma communi* to be that which is given "cum sola cognitione *confusa* privilegii [or, as the case may be, councils] sine *distinctiori notitia* illius." Benedict XIV.[10] says: "In forma communi confirmari dicuntur statuta, quae non singulatim examinantur, neque approbantur a Pontifice *motu proprio*, et ex certa scientia."

2. *Confirmatio in forma specifica* is that "quae fit cum *perfecta notitia* totius negotii, et omnium[11] ejus circumstan-

[4] Cath. Ch. in U. S., pp. 195, 196. [5] Ap. Coll. Lac., tom. iii., p. 130 seq.
[6] Ib., p. 151. [7] Conc. Pl. Balt., ii., p. 136.
[8] See Conc. Pl. Balt. III., pp. xiii, xiv, and p. 184.
[9] De Leg., lib. viii., cap. xviii., n. 5. Neapoli, 1872. Cfr. Reiff., lib. ii., tit. 30, n. 7. [10] De Syn. Dioec., lib. xiii., cap. v., n. 11. [11] Reiff., l. c.

tiarum." Benedict XIV. explains this more explicitly:[12] "In forma specifica fieri (confirmatio) dicitur, cui praemittitur causae cognitio, et singula statuta diligenter expenduntur, ac deinde, nulla adjecta conditione, auctoritate Apostolica cum clausula motu proprio, atque ex certa scientia, confirmatur."

171. *Q.* How can it be known that a provincial or national council is approved *in forma specifica* and not merely *in forma communi?*

*A.* 1. When the tenor or contents of its decrees are inserted in the instrument of confirmation.[13] 2. When, in the absence of the above, these phrases are used: *ex certa scientia; proprio motu;*[14] *ex plenitudine potestatis; non obstante*[15] *lege aut consuetudine in contrarium,* or *supplentes omnes juris et*[16] *facti defectus.* 3. The *recognitio* by the Sacred Congregation is not sufficient; the confirmation must be given by *letters Apostolic.*[17]

172. In case of doubt whether a council is approved in forma specifica or only in forma communi, canonists commonly hold that it is approved merely in forma communi.

173. *Q.* Can bishops in particular cases relax in their dioceses the decrees of provincial or national councils?

*A.* 1. They cannot, in case these councils are confirmed in forma specifica; for, as Benedict XIV.,[18] quoting from Fagnanus, says: "Statuto confirmato in forma specifica, *cum naturam induerit legis Pontificiae,* nulli inferiorum fas est derogare." 2. They may do[19] so if these councils are approved only in forma communi, excepting,[20] however, in those cases where such councils reserve to themselves the[21] power to dispense in their decrees.

[12] De Syn. Dioec., l. c. [13] Suarez, De Leg., lib. viii., cap. xviii., n. 5.
[14] Ib., n. 6. [15] Bened. XIV., De Syn., lib. xiii., cap. v., n. 11.
[16] Reiff, lib. ii., tit. 30, n. 8. [17] Bouix, De Episc., vol. ii., p. 394.
[18] L. c., n. 11. [19] Ib. [20] Supra, n. 74.
[21] Kenrick, Mor., Tract. 4. pars. i., n. 40.

174. *Q.* Is the Second Plenary Council of Baltimore approved in forma specifica?

*A.* 1. It is not; for the *Decretum* of the Propaganda, dated January 24, 1868, *Pro Recognitione Concilii* (Pl. Balt. II.), has none of the marks above given of the *confirmatio in forma specifica.* This appears from the decree itself, which reads: "Eadem S. Congr., ejusdem Concilii (Pl. Balt. II.) acta et decreta, diligenti inquisitione adhibita, expendit, paucisque exceptis correctionibus et animadversionibus, eadem ut ab omnibus ad quos spectant, inviolabiliter observentur, libentissime recognovit."[22]

2. Moreover, the sole revision and approbation of decrees by a Sacred Congregation is not Papal confirmation, at least *in forma specifica.*[23] For decrees of councils are sanctioned in forma specifica, not by a "Decretum S. Congr.[24] pro recognitione concilii," but by apostolic letters or briefs.[25] Now, the decrees of Baltimore were confirmed, or rather reviewed, not by apostolic letters, but by the "Decretum S. C. de Prop. Fide" above-mentioned, as appears clearly from the Holy Father's reply to the fathers of Baltimore, September 2, 1867: "Quod attinet ad Acta Concilii (Pl. Balt. II.) congruum de eisdem Actis, a nostra Congr Fidei Prop., praeposita, accipietis responsum."[26]

175. From what has been said we infer that it is allowed to appeal to the S. C. de Prop. Fide from the decrees of the Second Plenary Council of Baltimore, and also from the decrees of the *Third Plenary Council of Baltimore*, held in 1884; for, the *confirmatio*[27] *in forma communi* does not remove the *defectus juris* that may be contained in their enactments.[28] It

[22] Ap. Conc. Pl. Balt. II., p. cxxxvi

[23] Bouix, De Episc., vol. ii., pp. 394, 395. Paris, 1873

[24] Cfr. Conc. Pl. Balt. II., p. cxxxvi.

[25] Cfr. Bened. XIV., De Syn. Dioec., lib. xiii., cap. iii., n. 4.

[26] Ap. Conc. Pl. Balt., p. cxxxv.

[27] Cfr. Bouix, l. c., p. 395.

[28] Craisson, Man., n. 87.

may be objected that it can scarcely happen that a defective decree be enacted by a provincial or national council and yet be returned[29] by the S. Congr. without having been corrected. This we cheerfully admit. Yet the case is not impossible, as Bouix shows.[30]

176. It must be observed here that the confirmatio in forma specifica merely adds authority to the decrees of provincial or national councils, but does not, except when these decrees are inserted in the Corpus Juris Communis, extend their binding force beyond the respective province or nation, nor upon the entire Church.[31]

[29] Bouix, l. c., p. 395, 396.

[30] A careful study of the subject would seem to show that the Second Plenary Council of Baltimore was not confirmed by the Holy See in any form, not even *in forma communi*, but merely revised and corrected. Thus, the decree of the Propaganda (C. Pl. Balt. II., p. cxxxvi.) has for its heading the words: "Decretum pro *Recognitione* Concilii"; but not "Decretum pro *approbatione* or *confirmatione* Concilii." Nor did the Fathers of the council ask for a confirmation; they simply complied with the prescription of Pope Sixtus V., and sent the "Acts and Decrees" to the Holy See, not for the sake of having them confirmed, but merely revised and corrected (C. Pl. Balt. II., p. cxxxii.) In fact, to use the words of the Roman Consultor who examined our work, "The Holy See does not, as a rule, confirm any national or provincial council, but simply revises its acts, and, if need be, prescribes certain corrections. Sometimes, however, in those places or missionary countries where the common law of the Church does not fully obtain, there being need of some law, the Holy See confirms such councils. Thus it confirmed the four provincial councils of England, the First Plenary of Ireland (Synod of Thurles), and the First Plenary of Baltimore. But the Second Plenary of Baltimore, as also the Second Plenary of Ireland (Synod of Maynooth), was not confirmed by the Holy See, but, having been corrected by the S. C. de Prop. Fide, simply revised and ordered to be promulgated."

[31] Bened. XIV., De Syn., lib. xiii., cap. 3, n. 5. The *Third* Plenary Council of Baltimore, held in 1884, like the *Second*, was not approved, but merely revised by the Holy See. (See Decretum S. C. de P. F. 21 Sept. 1885, in C. Pl. Balt III., p. xvi.)

## CHAPTER XI.

### RULES FOR THE INTERPRETATION OF LAWS.

177.—I. *Ex parte causae efficientis*, there are four sorts of interpretations: 1, *interpretatio principis*, or that which is given by the lawgiver himself; 2, that which is established by lawful customs (*interpretatio usualis*); 3, or given by judges (*interpretatio judicis*); 4, or by learned men (*interpretatio doctrinalis*). The explanation of laws, as made by the lawgiver—*i.e.*, by the Pope, œcumenical council, and bishops—is authoritative[1] and has the force of law (*interpretatio authentica, necessaria*); the same holds true of the *interpretatio usualis*. The construction of laws, as made by judges of courts, binds only the actual parties to the suit, who alone are obligated to abide by the judge's rulings or explanations[2] of the law. The explanation which is given by theologians and[3] canonists, though always deservedly held in high esteem, need not, as a rule, be adhered to.

178.—II. *Ex parte causae formalis* or *ex natura ipsius interpretationis*,[4] the construction of laws is: 1, declaratory—*i.e.*, explanatory of the words of the law; 2, corrective—*i.e.*, favorable; 3, restrictive—thus,[5] penal laws must be construed strictly; 4, extensible, by which laws are extended to similar cases.[6]

179. *Q.* What are the chief rules for the interpretation of civil laws or statutes?

[1] Our Notes, pp. 438, 439.
[2] Reiff., lib. i., tit. 2, n. 362–366.
[3] Craiss., n. 238.
[4] Ib., n. 365.
[5] Blackstone, Introd., sect. 3, p. 21.
[6] Reiff., l. c., n. 370–374.

*A.* 1. The title of the act (or statute) and the preamble to the act are, strictly speaking, no parts of it.[7] 2. The real intention (of the lawgiver) will always prevail over the literal sense of terms.[8] 3. The words of a statute are to be taken in their natural and ordinary import and signification.[9] Other rules may be seen in Kent and Blackstone.[10] These rules may be applied also to ecclesiastical laws.[11]

180. It may not be amiss here to add that Pope Pius IV., in his constitution "*Benedictus Deus*," confirming the decrees of the Council of Trent, enacted very severe penalties against all "qui ausi fuissent ullos commentarios, glossas, adnotationes, scholia, ullumque omnino interpretationis genus super ipsius Concilii (Tridentini) decretis quocumque modo edere."[12] This prohibition, which applies to no other council, extends only to *printed* "ex professo" interpretations, but not to incidental explanations, even though printed, of individual decrees of the Council of Trent.[13]

[7] Kent, Com., vol. i., part iii., sect. 20, p. 460–463. [8] Ib., p. 462. [9] Ib.
[10] Introduct., sect. 3, p. 21.
[11] St. Liguori, lib. i., n. 200. Reiffenst., l. c., lib. i., tit. 2, n. 382–447.
[12] Ap. Soglia, vol. i., p. 12, § 7. [13] St. Lig., l. i., n. 200.

# PART II.

## *OF PERSONS PERTAINING TO THE HIERARCHY OF JURISDICTION IN GENERAL—i.e., OF ECCLESIASTICS, AS VESTED WITH JURISDICTIO ECCLESIASTICA IN GENERAL.*

## CHAPTER I

### DEFINITION OF THE CHURCH—MEANING OF THE WORD HIERARCHY IN GENERAL.

181.—I. The Church is defined: "Societas externa, visibilis, atque ad finem mundi duratura, completa et independens, distincta quoque, ac pro fine habens, omnibus hominibus procurandi media ad assequendam vitam aeternam."[1] Let us explain this definition.

182.—1. The Church is a society; for she is named in Sacred Scripture a kingdom,[2] a city that is set on a mountain,[3] etc. These symbols clearly imply that she is[4] a society. Theologians also prove that she is external, visible, and indefectible.

183.—2. The Church is, secondly, a perfect and independent society. A society is perfect when it is complete in itself, and therefore contains within itself adequate[5] means to attain its end. That our Lord has given his Church means sufficient to attain her end is evident from various texts of

[1] Craisson, l. c., n. 244.
[2] Matt. iv. 17.
[3] Ib., v. 14.
[4] Bouix, De Princip., p. 499.
[5] Tarqu., Jur. Eccl. Publ. Inst., n. 6, 42.

Sacred Scripture.[6] A society is independent when it is not subject to the authority of any other society.[7] Now, every person in the world is bound to obey the Church in matters pertaining to the *sanctificatio animarum.*[8] But if no individual is exempt from the authority of the Church, it is evident that no body of individuals—*i.e.*, no society—is de jure exempt from it. The Church, therefore, is not subject to civil society, but[9] entirely independent of it; nay, more, civil society, as far as the *sanctificatio animarum* is concerned, is subordinate to the Church.

184.—3. The Church, thirdly, is distinct though not separate from civil society.[10]

185. From what has been said we infer: 1. The Church is not merely a corporation (*collegium*) or part of civil society. Hence, the maxim[11] is false, "Ecclesia est in statu," or, the Church is placed under the power of the state. 2. The Church is rightly named a Sovereign State. This is proved by Soglia[12] in these words: "Ex definitione Puffendorfii, Status est conjunctio plurium hominum, quae imperio per homines administrato, sibi proprio, et aliunde non dependente, continetur. Atqui ex institutione Christi, Ecclesia est conjunctio hominum, quae per homines, hoc est, per Petrum et Apostolos, eorumque successores administratur cum imperio sibi proprio, nec aliunde dependente; ergo Ecclesia est Status."

186. The members of the Church[13] are divided into two classes: 1. Clerics or ecclesiastics (*clerici*), *i.e.*, those who belong to the *hierarchia*[14] *ordinis;* 2, Laics (*laici*), *i.e.*, the rest of the faithful.[15]

[6] Matt. xviii. 18, xxviii. 18, 19; Luc. x. 16; Jo. xxi. 15–18
[7] Craisson, Man., n. 245.
[8] Matt. xviii. 17. Cfr. Prop. 19, 20 of Syllab. 1864.
[9] Bouix, De Princip., p. 507.
[10] Salzano, vol. i., pp. 18, 19.
[11] Bouix, De Princip., p. 509.
[12] Vol. i., p 137.
[13] Tarqu., l. c., p. 92.
[14] Soglia, vol. i., p. 144.
[15] Devoti, lib. i. tit. 1, § 1, p. 72.

187.—II. *Meaning of the term Hierarchy* (*Hierarchia*).—The words hierarchy, sacred power (*sacer principatus*), or pre-eminence (*sacra praefectura*) are synonymous.[16] The term hierarchy, taken subjectively, denotes the body of persons having sacred or ecclesiastical power; as such, it is defined: "The body of persons having in various degrees sacred power or pre-eminence";[17] taken objectively, it signifies the power itself in sacred things; as such, it is defined: "Sacred power as possessed by various persons in different degrees."[18] Observe here, we use the word power both for the *potestas ordinis* and the *potestas jurisdictionis*.

188. The word hierarchy, therefore, comprises three things: 1, sacred power or ecclesiastical authority; 2, a number of persons possessing it; 3, rank and gradation among these persons.[19] The hierarchy, therefore, whether of order or jurisdiction, is vested in an organized body of ecclesiastics; the Roman Pontiff is the head of this organization.

189. *Division of the Hierarchy of the Church.*—1. By reason of its origin, the hierarchy is divided into divine—that, namely, which was instituted by our Lord, and consists of bishops, priests, and ministers;[20] and into ecclesiastical—or that which was developed by ecclesiastical authority, *v.g.*, the dignity of patriarchs,[21] primates, archbishops, and the like. 2. By reason of the sacred power vested in ecclesiastics, it is divided into, 1, the hierarchy of order (*hierarchia ordinis*)—that is, the power to perform sacred acts or functions and to confer sacraments; 2, the hierarchy of jurisdiction (*hierarchia jurisdictionis*)—that is, the power to teach, define dogmas, and oblige the faithful to believe in them; to make

[16] Bouix, l. c., p. 513. [17] Ib., p. 514. [18] Ib. [19] Ib., p. 515.
[20] Conc. Trid., sess. 23, cap. iv., can. 6. [21] Bouix, l. c., pp. 515, 516.

laws; to take cognizance of, and adjudicate upon, ecclesiastical causes; to enforce the laws of the Church, and therefore to inflict suspension, excommunication, deposition, and other penalties; to convene councils, preside over and confirm them; to erect benefices and appoint their incumbents; to dispose of ecclesiastical property, etc.[22] Some canonists contend that this division is inadequate, since it does not sufficiently take into account the teaching power of the Church (*potestas magisterii*). Consequently, they divide the hierarchy into the power (*a*) of order, (*b*) jurisdiction, (*c*) and *magisterii*, thus adding the latter to the two former.[23] This, however, is superfluous. For, as Card. Tarquini well remarks, if this *magisterium* is a *purum magisterium*, or simply the office of preaching and teaching, it is no power, and therefore cannot be called "*potestas magisterii.*" But if it means the power to compel the faithful to believe in the doctrines defined, it is *part* of, and therefore contained in, the power of jurisdiction. Hence it is not necessary to recede from the division of the ecclesiastical hierarchy commonly received in Catholic schools[24]—namely, into that of order and jurisdiction.

190. In the present volume, we shall discourse merely on the *hierarchia jurisdictionis*. We shall, 1, give a correct idea of the nature of the *jurisdictio ecclesiastica;* this will form the Second Part of this book; 2, show of what persons the *hierarchia jurisdictionis* is composed—*i.e.*, in whom the *jurisdictio ecclesiastica* is vested; this will make up the Third Part of this work.

[22] Bouix, l. c., pp. 521, 545. [23] Cf. Phillips, Kirchenr., vol. ii., pp. 138, 139.
[24] Card. Tarq., i., p. 3, nota.

# CHAPTER II.

## NATURE AND OBJECT OF ECCLESIASTICAL JURISDICTION.

### ART. I.

### *Difference between the Power of Jurisdiction and that of Order.*

191. There are those who erroneously contend that the power of jurisdiction is not separable or essentially distinct from the power of order; that, therefore, since bishops have the fulness of the *potestas ordinis* or *sacerdotii*, they are by that very fact possessed of the plenitude of the *potestas jurisdictionis*.[1] If this theory were correct, bishops would have the same jurisdiction as the Pope, and consequently the latter's supreme and universal jurisdiction would be destroyed.[2] In order to refute this most grave error we lay down the following proposition: The power of jurisdiction is essentially, and not merely accidentally, distinct from the power of order, provided (*a*) the latter cannot be taken away from nor diminished in bishops, while the former can be restricted; (*b*) provided the power of episcopal order can exist without the power of episcopal jurisdiction, and *vice versa*; but this is the case. Therefore, etc.[3] The major is evident.[4]

192. We therefore come to the minor, namely, the *potestas ordinis episcopalis* cannot be taken away or diminished, while the *potestas jurisdictionis episcopalis* can be restricted.[5] The first part is proved from these words of the Council of Trent:[6]

[1] Bouix, de Princ., p. 546. [2] Craiss., n. 250. [3] Ib.
[4] Bouix, l. c., p. 560. [5] Ib., p. 547, seq. [6] Sess. xxiii., cap. iv.

"Forasmuch as, in the Sacrament of Order, a character is imprinted which can neither be *effaced* nor *taken away*, the holy synod, with reason, condemns the opinion of those who assert that the priests of the New Testament have only a *temporary* power, and that those who have once been rightly ordained can again become *laymen*." The *potestas ordinis*, therefore, is inamissible, cannot be restricted either in itself[7] or as to persons and places; it is, moreover, equal and full or supreme in all bishops alike.[8]

193. On the other hand, the *potestas jurisdictionis episcopalis* may be limited, 1, as to *place* or countries: thus St. Peter admonishes bishops: "Feed the flock of God which is *among you*"[9]—that is, not the *entire* flock, but the *particular* portion assigned[10] them. St. Cyprian[11] expressly writes: "Singulis pastoribus *portio* gregis adscripta est." 2. As to *matters:* some have erroneously asserted that every bishop has *absolute* power[12] in his diocese. This is false: 1. Because œcumenical councils can make general laws—*i.e.*, laws binding on[13] all the bishops relative to ecclesiastical matters or discipline; the Roman Pontiffs have the same[14] power; nay, even national or provincial councils have power to[15] enact disciplinary laws obligatory on the bishops and metropolitans of the respective provinces; now, it is evident that if bishops are obliged, in the government of their dioceses, as undoubtedly they are, to observe these laws, their power is not absolute or unbounded as to matters. 3. As to *persons:* thus, members of religious communities, male and female, were exempted from episcopal authority already in the first ages[16] of the Church. The Council of Carthage (525) decreed: "Erunt igitur omnia omnino monasteria, sicut

[7] Bouix, l. c., p. 547.
[8] Ib.
[9] 1 Petr. v. 2; cfr. ad Titum, i. 5; Act. xx. 28.
[10] Bouix, l. c., p. 548.
[11] Epist. 55 ad Cornelium Papam.
[12] Bouix, l. c., pp. 546 and 551.
[13] Ib., p. 551.
[14] Ib., p. 552.
[15] Ib
[16] Ib., p. 554.

semper fuerunt, a conditione clericorum, modis omnibus libera." [17]

194. The *potestas ordinis episcopalis* may exist—in fact, has existed—without any jurisdiction, and, *vice versa*, episcopal jurisdiction can exist without the episcopal *ordo*. Thus it was ordered by the Council of Nice (325) that Meletius, Bishop of Thebaid, should be deprived of all power and[18] authority (*potestas jurisdictionis*) but yet retain the character, dignity, and name of bishop (*potestas ordinis*). Again, some of the ancient *chorepiscopi*, though true bishops, were not possessed of any *jurisdictio ordinaria*. Finally honorary bishops were formerly created to whom no diocese was assigned. It is evident, therefore, that a person may have the *potestas ordinis episcopalis* without having any *jurisdictio*. On the other hand, it is certain that a person may have *jurisdictio episcopalis* without being vested with the *potestas ordinis episcopalis*. Thus a bishop elect[19]—*i.e.*, one appointed already by the Pope though not yet consecrated—may govern his diocese with full authority as soon as he has received the bulls. Chapters, also, or rather vicars-capitular—with us, administrators—govern dioceses,[20] though not vested with the potestas ordinis episcopalis. We observe here, what is said of the powers of order and jurisdiction, as vested in bishops, is also applicable to these powers as vested in priests and sacred ministers; we argued from the episcopal ordo and jurisdictio merely, for[21] the reason that the question is disputed chiefly as regards bishops.

195. To show more clearly the distinction between the power of order and of jurisdiction we observe. 1. The *potestas ordinis* is conferred by ordination; the *potestas jurisdictionis* by legitimate[22] mission. 2. The former is alike in all that have the same *ordo*; the latter varies in degree, even in

[17] Labbe, tom. iv., col., 1649. [18] Bouix, l. c., p. 555. [19] Ib., p. 559.
[20] Cfr. Soglia, vol. ii., p. 9. [21] Bouix, l. c., p. 546.
[22] Soglia, l. c., p. 9.

ministers or officials of the same rank. 3. The *potestas ordinis* is not, properly speaking,[23] capable of delegation, while the *jurisdictio* is.

196. Our thesis is therefore established—to wit, The power of order and the power of jurisdiction are separable and essentially distinct one from the other. This distinction is thus expressed by the Council of Trent: "Si quis dixerit . . . eos, qui nec ab ecclesiastica et canonica potestate rite *ordinati* nec *missi* sunt, sed aliunde veniunt, legitimos esse verbi et sacramentorum ministros, anathema sit."[24] If solely by virtue of their ordination bishops and priests were possessed of sufficient jurisdiction, the holy synod would not have added, *nec missi sunt.*[25] It is scarcely necessary to observe that, while the two powers essentially differ from each other and are separable, they do not on that account necessarily exclude each other. Nay, sometimes both powers together are required for the validity of an act—*v.g.*, for the validity of absolution.[26]

## Art. II.

### *What is the precise extent or object*, 1, *of the Potestas Ordinis*; 2, *of the Potestas Jurisdictionis?*

197.—I. *Potestas Ordinis.*—The term *ordo* means both the act of ordination and the state of the sacred ministry.[27] To what objects does the *potestas ordinis* extend? Craisson answers by this *proposition:* "Ad potestatem ordinis referenda est quaelibet conficiendi vel conferendi sacramenta aut sacramentalia potestas, quam Christus *vel* Ecclesia alicui ordinum gradui alligavit."[28]

198. The proposition just given embodies this principle:

[23] Craiss., n. 256. [24] C. Trid., sess. xxiii., cap. iv., can. 7.
[25] Bouix, l. c., p. 560. [26] Craiss., n. 260. [27] Ferraris, V. Ordo, art. i., n. 1.
[28] Man., n. 257. Cfr. Soglia, vol. i., pp. 143, 144.

Sacramental functions are annexed to a determinate *ordo* in such manner as to be performable[29] only by a person in the respective order. This principle, however, admits of various exceptions. Thus, the bishop is the proper minister of holy orders; yet minor orders may be conferred by a priest. Again, the administration of the sacrament[30] of Confirmation, though attached to the ordo of episcopacy, may be administered by a priest duly authorized. The *potestas*[31] *ordinis* is imparted by ordination.

199.—II. *Potestas Jurisdictionis.*—In the Roman civil law, *jurisdictio* meant simply the judicial authority—*i.e.*, the power to take cognizance of causes by[32] judicial tribunals or judges of courts. In canon law, the term *jurisdictio* is taken in a broader sense; and from the time of Gregory the Great it has been[33] employed chiefly to express the entire legislative, judicial, and executive power inherent in the Church;[34] it is therefore defined: "Omnis ea imperii potestas, qua Ecclesia regitur et gubernatur."[35] We say: *Imperii potestas*—*i.e.*, authority which consists not merely in teaching and exhorting, but in enacting and enforcing laws.[36] Jurisdiction is also named *potestas publica*, in contradistinction to the *private authority*, *v.g.*, of parents over children.[37] Besides the above, jurisdiction also embraces the power of defining articles of faith (*potestas magisterii*), of convoking and presiding over councils and the like.[38]

200. Jurisdiction is conferred by legitimate mission, which consists in what is termed "*legitima assignatio subditorum*"[39] or *deputatio legitima ad exercendum munus spirituale.* Acts of jurisdiction performed by[40] persons not properly deputed are null and void.

[29] Cfr. Phillips, Kirchenr., vol. ii., p. 141. [30] Ib. p. 142.
[31] Soglia, l. c., p. 144. [32] Bouix, l. c., p. 545. [33] Phillips, l. c., pp. 5, 6.
[34] Soglia, vol. i., p. 145 seq. [35] Ib. [36] Ib.
[37] Reiff., lib. i., tit. 29, n. 3. [38] Bouix, l. c., p. 545.
[39] Soglia, l. c. [40] Cfr. Conc. Trid., sess. xxiii., can. 7, 8

201. *Q.* Is the Church possessed of jurisdiction in the proper sense of the term?

*A.* Protestants contend that the entire power of the Church consists in the right to teach and exhort, but not in the right to command, rule, or govern; whence they infer that she is not a perfect society[41] or sovereign state. This theory is false; for the Church, as was seen, is vested *jure divino* with power, 1, to make laws; 2, to define and apply them (*potestas judicialis*); 3, to punish those who violate her laws (*potestas coercitiva*).[42]

202. The punishments inflicted by the Church, in the exercise of her coercive authority, are chiefly spiritual (*poenae spirituales*), *v.g.*, excommunication,[43] suspension, and interdict. We say *chiefly;* for the Church can inflict[44] temporal and even corporal punishments.[45]

203. Has the Church power to inflict the penalty of death?[46] Card. Tarquini thus answers: 1. Inferior ecclesiastics are forbidden, though only by ecclesiastical law, to exercise this power directly.[47] 2. It is certain that the Pope and œcumenical councils have this power at least mediately —that is, they can, if the necessity of the Church demands, require a Catholic ruler to impose this penalty.[48] 3. That they cannot directly exercise this power cannot be proved.[49]

204. What objects or things fall under ecclesiastical jurisdiction? Some things come directly within the reach or compass of the Church's authority, others but indirectly.[50] 1. Now, those matters and acts fall directly under ecclesiastical jurisdiction which are essentially spiritual. But how are temporal things distinguished from spiritual? Certainly not because the former are corporeal, visible, or external, while the latter are invisible or immaterial; otherwise, sacraments,

[41] Ap. Soglia, vol. i., p. 145. [42] Cfr. ib., p. 152. [43] Ib., p. 153.
[44] Cfr. Syllabus, Prop. 24. [45] Stremler, Peines Eccl., p. 13, seq.
[46] Cf. Reiff., lib. i., tit. 29, n. 25, 26. [47] Tarq., l. i., n. 47, ad 7m., p. 48.
[48] Ib. [49] Ib. [50] Cfr. Craisson, Man., n. 263.

being visible signs, would have to be accounted[61] temporal objects. Spiritual things, therefore, are distinguished from temporal by reason of their respective ends. Hence, those matters are spiritual[62] which have an exclusively spiritual[63] end—namely, the salvation of the soul—even though they be of a corporal structure. 2. On the other hand, things are temporal, and come within the cognizance of the civil power, when, even[64] though not corporeal or visible, their immediate end is temporal or civil—*i.e.*, when they are ordained directly for the welfare of civil society. 3. Temporal things, however, fall directly under the Church's authority, so far as they are capable of becoming objects of supernatural acts and virtues or also vices. Suarez[65] writes: "Quia fere tota materia temporalis ad spiritualem finem ordinari potest, et illi subest, sub illo respectu inducit quamdam rationem spiritualis materiae, et ita potest ad leges canonicas pertinere."

205. There is still another class of things, those, namely, which pertain at the same time, though not under the same respect, to both powers—the spiritual and the temporal—and are consequently named *quaestiones mixtae* or *mixti*[66] *fori*. Now, things may fall under the cognizance of both powers, and therefore become *mixti fori* chiefly in three ways: 1. When they have two ends—one civil, the other ecclesiastical or spiritual. Marriage is a case in point.[67] All questions bearing on the sacramental character of matrimony, *v.g.*, the validity of marriages or betrothals, fall under the Church's jurisdiction. Questions, however, respecting the property of married persons,[68] inheritance, and the like, are within the competence of civil courts. 2. When, for the better execution of laws,[69] the Church and state assist

[61] Phillips, vol. ii., p. 534. [62] Ib., p. 536. [63] Soglia, vol. i., p. 320.
[64] Phillips, l. c., p. 536. [65] De Leg., lib. ii., cap. 11, n. 9.
[66] Phillips, l. c., p. 542. [67] Ib., p. 545.
[68] Bened. XIV., De Syn., lib. ix., cap. ix., n. 3, 4.
[69] Phillips, l. c. p. 543.

one another, *v.g.*, in the suppression of rebellion or heresy 3. By historical evolution.[60]

206. Things, moreover, may come within the jurisdiction of the Church not only by reason of their nature[61] or character, as we have just seen, but also because of the persons[62] to which they refer. Thus, according to the common law of the Church, ecclesiastics are not amenable to the jurisdiction of civil courts; the bishop[63] is the only competent judge in all their causes. We say, according to the common law of the Church; for, at present, this privilege is almost everywhere greatly[64] restricted. Ecclesiastics may also implead and be impleaded in many instances in civil courts, especially in non-Catholic countries.[65]

[60] Phillips, l. c., p. 544. [61] Cfr. Benedict XIV., l. c., n. 8. [62] Ib. [63] Ib., n. 9. Cfr. Soglia, vol. i., § 58. [64] Bened. XIV., l. c., n. 11, 12. [65] Infra, n. 415, 455.

# CHAPTER III.

## DIVISION OF ECCLESIASTICAL JURISDICTION.

207. Jurisdiction in general is distinguished into ecclesiastical and civil or political.[1] Ecclesiastical jurisdiction, of which we here treat, is divided:

208.—1. Into *jurisdictio fori interni et fori externi.* By *forum* is meant either the place of trials or the exercise[2] itself of judicial authority. 1. The *jurisdictio fori interni* is that which refers primarily and directly to the private utility of the faithful[3] taken individually; it is exercised chiefly in the administration[4] of the sacraments. The jurisdictio fori interni is subdivided into the *jurisdictio fori poenitentialis*, or that which is exercised only in the tribunal of penance, and into the *jurisdictio fori interni extrapoenitentialis*—that, namely, which is exercised out of the confessional.[5] 2. The *jurisdictio fori externi* is that which relates primarily and directly to the public good of the faithful taken as a body.[6] To make laws, decide controversies on faith, morals, or discipline, punish criminals, and the like are acts of the *jurisdictio fori externi.* Hence, a person may have jurisdiction *in foro interno* but not *in foro externo*, *v.g.*, parish priests; and, vice versa, one may possess jurisdiction *in foro externo* without having any *in foro interno*, *v.g.*, vicars-general not yet in sacred orders but merely in clerical tonsure. Civil society has no jurisdictio fori interni.[7]

209.—2. Into *universal* and *particular.* By *jurisdictio uni-*

[1] Reiff., lib. i., tit. 29, n. 7. [2] Craiss., n. 277. [3] Bouix, De Princ., p. 560. [4] Craiss., n. 277. [5] Bouix, l. c., p. 561. [6] Ib. [7] Ib., p. 562

*versalis* we mean that which is unlimited as to, 1, persons; 2, places or countries; 3, matters subject to the authority of the Church. Such was the jurisdiction of the Apostles such is, at present, that of the Roman Pontiffs and of oecumenical councils.[8] By *jurisdictio particularis* we mean that which is restricted either as to, 1, persons; 2, or places; 3, or things. When particular jurisdiction is confined to a certain class of persons, but not[9] to any particular place, it may be exercised everywhere. Thus, prelates of regulars can *everywhere* exercise jurisdiction over monks subject to them.[10]

210.—3. Into *voluntary* and *contentious* jurisdiction.[11] Voluntary jurisdiction (*jurisdictio voluntaria—jurisdictio extrajudicialis*) is that which the bishop or superior can exercise without any judicial formalities (*absque forma judicii*). The ordinary can exercise it everywhere, even when he is not in his own diocese. Contentious jurisdiction (*jurisdictio contentiosa—jurisdictio judicialis*) is that which is exercised *cum forma judicii*[12]—*i.e.*, according to the forms prescribed for trials or judicial acts. A prelate cannot, either licitly or validly, exercise contentious jurisdiction out of his own territory.[14]

211.—4. Into *ordinary* and *delegated* jurisdiction. By *jurisdictio ordinaria*[15] we mean that which is, by law, whether divine or ecclesiastical, or by custom or privilege, permanently[16] attached to an ecclesiastical office or dignity.[17] Hence, a *judex ordinarius* is one who exercises jurisdiction by virtue of his office, and therefore in his own name (*jure proprio, jure suo, jure officii sui*).[18]

212. The title *ordinarius*, however, is not applied to every

[8] Bouix, l. c., p. 562. [9] Ib. [10] Bouix, De Princip., p. 563
[11] Reiff., lib. i., tit. 29, n. 8, 9. [12] Craisson, Man., n. 281.
[13] Bouix, De Princip., p. 565. [14] Craisson, l. c.
[15] Phillips, Kirchenr., vol. ii., p. 146. [16] Ib., vol. vi., pp. 752, 7[illegible].
[17] Phillips, Lehrb., p. 369. [18] Soglia, vol. ii., p. 448.

one having *jurisdictio ordinaria,*[19] but to those only who have *jurisdictio ordinaria in foro externo, v.g.*, bishops, vicars-general, etc. Parish priests have *jurisdictio*[20] *ordinaria* only *in foro interno,* but not *in foro externo,* and are not, consequently, *ordinarii.*[21]

213. As the *jurisdictio ordinaria* attaches to the office itself (*officium*), it is always obtained simultaneously with the office, and is not lost until the office is either[22] resigned or lawfully taken away.

214. *Jurisdictio delegata* is that which a person exercises, as a rule, only by order or commission[23] of some one having jurisdictio ordinaria; a *delegatus*, therefore, acts not by virtue of his office or in[24] his own name, but in the name of another. We say, "as a rule," for *jurisdictio delegata* is exceptionally[25] given also by the law itself. Such, for instance, is the power which the Council of Trent granted to bishops in regard to exempted regulars. Hence, *delegati* have jurisdiction either *ab homine* or *a jure—i.e.*, they are commissioned or delegated either by a *person* having *jurisdictio ordinaria* or by the *jus commune* and custom.[26] Bishops, for example, are in many instances empowered by the jus commune, *v.g.*, by the Council of Trent,[27] to act *tanquam sedis apostolicae*[28] *delegati.*

215. Bishops receive *jurisdictio delegata a jure* when the jus commune[29] uses the phrase *tanquam sedis apostolicae delegati,* or "*etiam* tamquam sedis apostolicae delegati." When bishops proceed simply "*tanquam* sedis apostolicae delegati," it is allowed to appeal from them to the Sovereign[30] Pontiff only, but not to the metropolitan; but if they

[19] Bouix, De Princip., p. 567.
[20] Craisson, Man., n. 282.
[21] Cfr. Conc. Trid., sess. xxiv., cap. i.
[22] Soglia, l. c., p. 449.
[23] Phillips, Lehrb., p. 369.
[24] Reiff., lib. i., tit. 29, n. 12.
[25] Phillips, l. c.
[26] Craisson, l. c., n. 285.
[27] Sess. v., cap. i.; sess. vi., c. 2 de Ref., etc.
[28] Bouix, l. c., p. 570.
[29] Craisson, Man., n. 285.
[30] Reiff., l. c., n. 36.

act "*etiam* tamquam," etc.,"[31] an appeal lies to the archbishop. Observe, whenever bishops are authorized to proceed[32] *etiam* tamquam, etc., they are vested both with *jurisdictio ordinaria*[33] and *jurisdictio delegata*, and may act by virtue of either power.[34]

216.—5. Into *jurisdictio immediata* and *jurisdictio mediata*.[35] Jurisdiction is immediate when it can be exercised at all times, not merely in case of necessity; such is the authority of the Pope throughout the entire Church, of the bishop in his diocese, and of the parish priest in his parish. On the other hand, mediate jurisdiction is that which cannot be exercised save in certain cases determined by law; such, for instance, is the authority of metropolitans over the subjects[36] of their suffragans. We say "*subjects of suffragans*,"[37] for over the suffragans themselves archbishops have *jurisdictio ordinaria* and *immediata*.[38]

217. *Q.* What is the nature of the jurisdiction vested in the Supreme Court of the United States?

*A.* The *original* jurisdiction of the Supreme Court is confined to those cases[39] which affect ambassadors, other public ministers, and consuls, and to those cases in which a State is a party. The *appellate* jurisdiction of the Supreme Court exists only in those cases in which it is affirmatively given.[40] Its whole appellate jurisdiction depends upon the regulations of Congress.

[31] Reiff., l. c., n. 37. Cfr. Conc. Trid., Sess. xxii., cap. x., d. R., and Sess. vi., cap. iv. [32] Craiss., n. 287. [33] Bouix, De Paroch., pp. 281, 282. Paris, 1867

[34] Reiff., l. c., n. 38. [35] Craiss., n. 288.

[36] Cfr. Phillips, Kirchenr., vol. vi., p. 829 seq. Ratisbon, 1864.

[37] Reiff., lib. i., tit. 31, n. 40. [38] Ib., n. 35.

[39] Kent, Com. i., p. 314. [40] Ib., p. 324.

# CHAPTER IV.

## ON THE MODE OF ACQUIRING ECCLESIASTICAL JURISDICTION, IN GENERAL.

### ART. I.

### *Of the Subject of Ecclesiastical Jurisdiction.*

218. The subject of ecclesiastical jurisdiction is twofold: active and passive. By the *passive subject* we mean all persons falling under the authority of the Church; by the *active subject*, those who are vested with or have jurisdiction.[1] With regard to the passive subject, we say: All baptized persons come under the dominion of the Church. We say "*baptized* persons"; for not only Catholics, but also heretics, are, at least *per se*,[2] subject to the laws of the Church; infidels are not so subject.[3]

219. As to the *active subject*[4] we merely observe: Those persons only are vested with jurisdictio ecclesiastica who have obtained it in a canonical manner, either by having received an office (officium), or by having been delegated by one having an office. In the following chapters we shall therefore show, 1, how persons receive jurisdictio delegata —*i.e.*, are delegated by those holding an office; 2, how they obtain jurisdictio ordinaria—*i.e.*, are appointed to ecclesiastical offices. In the next article, we shall premise some observations relative to the proper or canonical title of jurisdiction.

[1] Craiss., n. 289. [2] Tarquini, p. 78, n. 64. [3] Cfr. 1 Cor v. 12.
[4] Tarqu., l. c., p. 91.

## Art. II.

### *Of the requisite Title to Jurisdiction, and its Necessity.*

220. By the word title (*Titulus*), in general, we here mean *the act by which power is given to a person to perform ecclesiastical functions.*[5]

221. *Division.*—Titles are true or false. They are true or legitimate (*Titulus verus*)—*i.e.*, not vitiated or defective, 1, when they are conceded in due form; 2, to persons properly qualified; 3, by those who are vested with libera potestas.[6] Titles are false (*Titulus falsus*) when they are defective as to any of the above conditions. A false title, when deemed legitimate by others, is also called *Titulus putativus.*

222. A title may be false or illegitimate in three ways:[7] 1. When it has in no way been granted by the superior, or not for the case, place, time, or person in question. Hence, the false title in this case is named *Titulus fictus.* 2. When, though given by the proper superior, and of itself capable of conferring jurisdiction, it is nevertheless rendered void by some occult defect, either (*a*) in the grantor; thus, if the death of the bishop were unknown, his vicar-general would have but a colored title; (*b*) or in the grantee, *v.g.*, by occult irregularity, or if he has been deprived of his title, and this fact is unknown; (*c*) or in the concession itself of the title, *v.g.*, if secret simony intervened. A title defective in these three ways is termed *Titulus coloratus.* 3. When conceded by a superior who had no power to do so, *v.g.*, by the archbishop, out of those cases where he may supply the negligence of suffragans; or if the title is indeed given by a competent superior, but is other-

[5] Craiss., n. 292 [6] Ib. [7] Ib., n. 293.

wise manifestly defective. Such title is a *Titulus simpliciter nullus.*

223. *Q.* Is a false title sometimes sufficient to obtain jurisdiction?

*A.* Craisson[8] answers that where a true title is wanting, a false or putative one is sufficient *in foro interno* and *externo* for the valid exercise of jurisdiction, both ordinary and delegated; provided, 1, there be common error; 2, the defect in the title be curable by the Church; 3, there be at least a colored title.

224. The third condition, *that there be at least a colored title*, is, however, not considered essential by all canonists; for it is a mooted[9] question whether a *titulus coloratus* is absolutely necessary. Many affirm that *error communis* is sufficient, without any title whatever. St. Liguori[10] thinks this a probable opinion. It is therefore probable that a priest can absolve validly even though he has,[11] in reality, no jurisdiction, provided it is believed by "error communis" that he has faculties. Hence, as Sanchez[12] says, a confessor approved for one year can validly absolve, even after the lapse of the year, if it is commonly believed that he still possesses faculties. So, also, a confessor from another diocese can absolve validly in a diocese[13] where he is not approved, if by "error communis" he is considered approbatus ad confessiones.

225. We say, the absolution in these cases is probably *valid:* is it also[14] *lawful?* In other words: Is it lawful for a confessor to administer the sacrament of penance with the above *jurisdictio probabilis*, given him by "error communis"? There are three opinions: the first denies; the second affirms; the third, which is the one embraced by St.

[8] Craiss., l. c., n. 294. [9] Bouix, De Judic., vol. i., p. 134. Paris, 1866.
[10] Lib. vi., n. 572. [11] Notes, p. 218. [12] Ap. Craiss., Man., n. 304.
[13] Cfr. Bened. XIV., Instit. 84, n. 14-23. Prati, 1844.
[14] Ib., n. 16.

Liguori,[15] holds that it is lawful to administer the sacrament of penance *cum jurisdictione tantum probabili,* only when there is *causa gravis necessitatis or magnae utilitatis.*[16]

[15] Lib. vi., n. 575. Mechliniae, 1852. [16] Cfr. Craiss., l. c., n. 306.

# CHAPTER V.

## ON THE MANNER OF ACQUIRING ECCLESIASTICAL JURISDICTION, IN PARTICULAR—MODE OF ACQUIRING JURISDICTIO DELEGATA.

226. By a delegate (*delegatus*) we mean, in general, a person empowered to act or exercise jurisdiction for another.[1] *Jurisdictio delegata*, as was seen, emanates either *a jure* or *ab homine*.[2]

227. *Q.* What persons have power to delegate—*i.e.*, confer *jurisdictio delegata* upon others?

*A.* All persons vested with *jurisdictio ordinaria* can,[3] as a rule, delegate others. But neither ordinary superiors nor *delegati ad universitatem*[4] *causarum* can, without the consent of the Pope (*inconsulto Principe*), commit their entire authority *in perpetuum*[5] to others; the reason is, as Ferraris,[6] speaking of the judex ordinarius, says: "Quia delegando alteri totam suam jurisdictionem, seu totum suum officium ipsi committendo, non tam censetur delegare quam omnino abdicare se officio suo ordinario, quod nequit fieri sine consensu Principis."

228. *Q.* Can *delegati*—*i.e.*, persons who themselves have but *jurisdictio delegata*—sub-delegate others?

*A.* *Delegati* are deputed (*a*) by the Pope or the Sacred Congregations; (*b*) by inferior ordinaries.[7]

I. A person delegated by the Pope or the Sacred Con-

[1] Cfr. Ferraris, V. Delegatus, n. 1-3.
[2] Supra, n. 214.
[3] Reiff., lib. i., tit. 29, n. 55. Cfr. Regula Juris in 6.
[4] Craiss., l. c., n. 312.
[5] Bouix, De Judic., vol. i., pp. 144, 145
[6] V. Delegatus, n. 15.
[7] Craiss., l. c., n. 308.

gregations[8] can, as a rule, sub-delegate others—*i.e.*, authorize them to act for him. We say, *as a rule;* for two exceptions must be admitted: 1, "Si sit electa industria personalis[9] delegati." Now, a *delegatus* is supposed to be chosen "ob industriam personalem" when, for instance, he is commanded in the letters of delegation to attend personally[10] to the matter, *v.g.*, by the words, "per teipsum," or "personaliter exequaris"; 2, if the power delegated is simply ministerial,[11] *v.g.*, the execution of dispensations of marriages; yet, even in this case, sub-delegates may be employed, *v.g.*, to collect information or to ascertain whether *preces veritate nitantur.*[12]

229.—II. A person delegated by inferior ordinaries, *v.g.*, by bishops, cannot, as a rule, sub-delegate others.[13] We say, *as a rule;* because it is the common opinion[14] that, when such person is delegated *ad universitatem causarum*, in view of his office (*tanquam per officium*) he can sub-delegate others. Bouix,[15] however, thinks it unsafe even for a *delegatus ad universitatem causarum* to sub-delegate others, save where a legitimate custom of the country sanctions it.

230. Rural deans[16] and pastors in the U. S. to whom a certain kind of causes or matters is collectively committed—*v.g.*, the power to grant, in a certain district, dispensations from one or two of the proclamations of the banns of marriage—would appear to be accounted *delegati ad universitatem causarum*,[17] and would seem, therefore, authorized to subdelegate others with regard to particular cases.

231. *Q.* To what persons can jurisdiction be delegated?

*A.* Generally speaking, only to those who, 1, are free

[8] Cfr. Ferraris, V. Delegatus, Novae addit. ex aliena manu, n. 12.

[9] Bouix, De Judic., vol. i., p. 145.

[10] Cfr. Reiff., l. c., n. 60.

[11] Ferraris, l. c., n. 23, 24.

[12] Craiss., l. c., n. 308.

[13] Bouix, l. c., pp. 145, 146.

[14] Ib., p. 146.

[15] Ib.

[16] Cfr. Conc. Pl. Balt. II., n. 74.

[17] Craiss., l. c., n. 311.

from defects that debar a person from jurisdiction, and, 2, have the requisite qualifications.[18]

232.—I. Now, the defects (*vitia*) that disqualify a person to hold[19] *jurisdictio delegata* are, 1, *a natura, v.g.*, deafness, loss of speech, insanity, and the like; 2, *a lege, v.g.*, "excommunicatio non tolerata," infamy; 3, *a moribus, i e.*, custom—thus, slaves and women cannot be *judices delegati.*[20]

233.—II. Of the necessary qualifications (*dotes*), some are required in every delegation; thus, as a rule, clerics only, and[21] not laymen, can be delegated; others are required in certain cases only. Besides, as a rule, a person, in order to be capable of being delegated by the Pope, should be an ecclesiastical dignitary, or a canon of a cathedral chapter, or a vicar-general of a bishop, or a conventual prior or superior of regulars. We said, "as a rule"; for, at present, as we have shown,[22] ordinary confessors and priests are not unfrequently entrusted with the execution of dispensations or faculties granted by the Holy See.[23]

234. *Q.* Can an ecclesiastical or at least a civil cause of clerics be delegated or committed to a layman?

*A.*—1. Bishops and other prelates[24] inferior to the Pope cannot delegate to laymen either, 1, spiritual (*causae mere ecclesiasticae, causae spirituales*); 2, or criminal causes (*causae criminales*) of ecclesiastics; 3, neither can they, according to the more probable opinion,[25] assign to lay judges for judicial cognizance even the civil causes (*causae civiles, causae temporales*) of clerics.[26]

2. The Sovereign Pontiff may, however, commit to laics, *v.g.*, to kings, not only civil or temporal, but also a certain number of ecclesiastical or spiritual causes of clerics;[27] but he cannot subject *all* ecclesiastics and *all* causes of ecclesias-

[18] Craiss., l. c., n. 313. [19] Ferraris, V. Delegatus, n. 25, 26.
[20] Cfr. Reiff., l. c., n. 66. [21] Craiss., l. c., n. 315. [22] Supra, n. 54
[23] Ferraris, V. Delegatus, n. 31. [24] Reiff., lib. i., tit. 29, n. 88.
[25] Ib., n. 89-92. [26] Cfr. Craiss., l. c., n 316. [27] Reiff. l. c., n. 92.

tics to the civil tribunal; in other words, he has no power to do away *entirely* with the *privilegium fori.*[28]

235. *Q.* What should be the nature of the act of delegation *ab homine?*

*A.*—1. Delegated faculties are essential either to the validity of an act, *v.g.*, approbation for confessions; or only to the licitness of an act, *v.g.*, in the administration of sacraments, save that of penance.[29] In the *first* case, the *delegatio* must be positive—that is, express, or at least presumptive, provided the presumption rest upon signs that indicate actual consent (*consensus de praesenti*); internal consent is not sufficient[30] for approbation to hear confessions, nor for assistance at marriages, where the Tridentine Decree on clandestinity is published. In the *second* case—*i.e.*, when there is question merely of the licitness of an act, the *licentia rationabiliter praesumpta* or the *ratihabitio rationabiliter sperata*[31] is sufficient; this holds true, according to St. Liguori,[32] of the administration of baptism, confirmation, extreme unction, and the holy eucharist, and with us also of matrimony.[33]

236. Priests in the U. S. are strictly forbidden to baptize or marry parties from other dioceses who can easily recur to their pastor;[34] nay, the statutes of the various dioceses of this country, as a rule, prohibit priests from baptizing or marrying, not only those who belong to other dioceses, but also those who belong to other parishes or missionary districts. Thus, the statutes of Boston enact: "Prohibemus sub poena suspensionis ne ullus pastor, fideles ex altero (districtu) advenientes absque proprii eorum pastoris licentia matrimonio

[28] Reiff., l. c., n. 93.
[29] Craiss., n. 320.
[30] St. Liguori, lib. vi., n. 570. Mechliniae, 1852. Cfr. our Notes, p. 269.
[31] Craiss., n. 322.
[32] Lib. vi., n. 11, 173, 255, 722.
[33] Cfr. Reiff., lib. iv., tit. 3, n. 83, 84.
[34] Conc. Pl. Balt. II., n. 117, 227. See our Notes, p. 175.

conjungat, vel infantes baptizet."[35] The statutes of Newark enjoin the same[36] *sub gravi.*

237.—2. The *delegatio* should, moreover, be made known to the delegatus, and accepted, at least, implicitly by him.[37]

238.—3. The *delegatio* should be free; hence, if a superior gives delegated faculties altogether against his will, the act is invalid. We say *altogether;* for if he did so even out of *metus gravis et injustus,* his act would not, on that account, be invalid.[38]

239.—4. It need not be in writing, save in cases prescribed by law.[39]

240. In the use or exercise of *jurisdictio delegata,* the delegatus must state that he acts by virtue of delegated powers. Hence, bishops in the United States, when conferring upon their priests such faculties as they hold from the Holy See, as also in dispensing from impediments to marriage, use this form: "Vigore facultatum a S. D. N. Pio IX. (Leone XIII.) nobis collatarum," etc., or similar formulas.[40]

[35] Syn. Boston. II., ann. 1868, tit. 4, n. 46. [36] Statuta Novarc, p. 12.
[37] Craiss., n. 323. [38] Ib., n. 324. [39] Ib., n. 325.
[40] However, these or similar formulas, except where the Papal indult requires it, and that on pain of nullity—*v.g.*, by the phrase *alias nullae sint*—are no longer necessary to the validity of the above dispensations or faculties. Hence, these dispensations and faculties, when granted by bishops in the U. S. informally—*v.g.*, orally, or even by telegraph, in some such simple words as "the dispensation or faculty is granted"—are valid, and, if there be sufficient cause for this mode of concession, also licit. For the above formulas are not, at least at the present day, prescribed on pain of nullity in the faculties given our bishops by the Holy See (Konings, n. 1628, q. 6).

## CHAPTER VI.

### MANNER OF ACQUIRING JURISDICTIO ORDINARIA.

### ART. I.

*Of the Institution or Establishment (Constitutio) of Offices to which Ecclesiastical Jurisdiction is attached.*

241. *Q.* By what right is jurisdiction attached to ecclesiastical offices?

*A.*—I. *As to the Papal dignity or office*, it is certain that jurisdiction over the entire Church is immediately and directly[1] conferred by Christ upon the one who is elected Sovereign Pontiff. For, once canonically elected by the cardinals,[2] the Pope, without any further institution, confirmation, or collation, receives universal jurisdiction from Christ, and not from the cardinals, who have themselves no such jurisdiction.[3]

242.—II. Whether *bishops* hold jurisdiction in their respective dioceses immediately of God, or but mediately,[4] was much debated in the Council of Trent; no decision was arrived at, and the question is consequently still open. Whatever opinion we may choose to follow, it is universally[5] admitted, even by those who assert that bishops receive jurisdiction immediately from God and not from the Pope, that the *exercise* of the episcopal jurisdiction[6] depends upon the Sovereign Pontiff.[7]

[1] Zallinger, ap. Soglia, vol. i., p. 295.
[2] Notes on the Second Pl. C. Balt., p. 77. [3] Craiss., n. 327. [4] Ib., n. 328.
[5] Ib., n. 329. [6] Soglia, vol. ii., p. [7] Cfr. Tarquini, p. 94.

243.—III. The "Schola Parisiensis" maintained that *parish priests* are the successors of the seventy-two disciples of our Lord, and receive directly from Christ the power to perform hierarchical[8] functions. This opinion, however, was long ago rejected[9] by the most eminent canonists and theologians. In fact, the seventy-two disciples were not parish priests, nor even simple priests. Parish priests themselves were altogether unknown[10] in the first centuries, and did not come into existence in rural districts before the fourth century, and, in cities where bishops resided, not before the year 1000. Rome and Alexandria, perhaps, form exceptions in this respect.[11]

244.—IV. *Among the bishops themselves* there is, *jure divino,* no gradation or superiority; for Christ[12] constituted all bishops equals. The Pope alone is, jure divino, superior to bishops. Hence, only the Papal and Episcopal offices or dignities are of divine[13] institution; the other offices in the Church, or grades of jurisdiction—*v.g.*, the dignity of patriarchs, metropolitans—are undoubtedly of ecclesiastical[14] appointment.

245. By an ecclesiastical office (*officium ecclesiasticum*—Kirchenamt) we mean the right possessed by a cleric to exercise ecclesiastical jurisdiction within the sphere assigned him by ecclesiastical authority.[15] Ecclesiastical offices, therefore, can be established and distributed only by the ecclesiastical, but not by[16] the secular, authority. We shall see in the following question what persons in the Church are entitled to establish these offices.

246. *Q.* Who can establish ecclesiastical offices in the Church?

[8] Craiss., n. 330.
[9] Soglia, l. c., p. 45.
[10] Craiss., n. 330. Cfr. Soglia, vol. ii., p. 44.
[11] Bouix, De Paroch., pp. 23, 24. Paris, 1867.
[12] Bouix, De Princip., pp. 530, 531.
[13] Soglia, vol. ii., p. 7.
[14] Ib., p. 9.
[15] Phillips, Lehrb., § 71, p. 129.
[16] Ib., p. 130.

*A*.—I. *Erection of Episcopal Sees.*—In the beginning of the Church, not only St. Peter, but also the other apostles,[17] erected episcopal sees; for all the apostles, without exception, received from our Lord *jurisdictio universalis*[18]—*i.e.*, "*jurisdictio in totam Ecclesiam et in totum orbem.*" This *jurisdictio universalis* included the power to establish bishoprics.[19] But, as Craisson[20] remarks, "Potestas universalis singulis apostolis a Christo tributa, transmissa non fuit ad eorum in episcopatu successores; sed sola potestas Petri, utpote ordinaria, ad ipsius successores seu summos Pontifices, debuit transire."

247. Hence, upon the death[21] of the apostles, no bishoprics could be established save by the consent[22] of the Pope. From this we are not, however, to infer that in the first centuries episcopal sees were always erected by the *immediate* authority of the Holy See; for ecclesiastical discipline on this head suffered change at three different[23] periods. The first period extends from the beginning of Christianity to the sixth century. During this epoch episcopal sees were erected *chiefly* by provincial councils, without the *express* sanction[24] of the Holy See. We say, 1, *chiefly* by provincial councils; for no small number of bishoprics were, even during[25] this time, established by the Popes. We say, 2, *without the express sanction of the Holy See;* because provincial councils, in erecting episcopal sees, were bound to observe the laws enacted or approved by the Roman Pontiffs;[26] this is evident from the fact that when the African bishops, contrary to the laws of the Church on this head, instituted bishops even in small places, they were reproved[27] by Pope St. Leo for so doing. In the Eastern Church bishoprics

[17] Craiss., n. 332.
[18] Bouix, De Episc., tom. i., pp. 45, 46.
[19] Cfr. Soglia, vol. i., pp. 207, 208.
[20] L. c., n. 332.
[21] Devoti, lib. i., tit. 5, sect. 1, n. 5, p. 202.
[22] Craiss., n. 332.
[23] Soglia, l. c., p. 203.
[24] Ib., p. 204.
[25] Ib., p. 205.
[26] Craiss., n. 333.
[27] Ib.

were at first established exclusively by the patriarchs; but after ecclesiastical provinces had been formed, this power was exercised also by metropolitans and provincial councils.[28]

248.—2. The second period reaches from the sixth to the eighth century. During this time metropolitans and provincial councils were no[29] longer free to establish bishoprics without the express[30] consent of the Roman Pontiffs.

249.—3. The third period extends from the eighth century to the present day. During this period the power to establish episcopal sees reverted exclusively, though gradually,[31] to the Sovereign Pontiffs, by whom *alone* it is exercised at the present day—at least, so far as the Latin Church is concerned.[32] We must, therefore, distinguish in this matter the question of *right*[33] from that *of fact*. The right or power to erect bishoprics is and always has been, de jure, vested in the Popes alone; as a matter of fact, however, this power was exercised also by[34] others, although only by the express or tacit permission of the Holy See.

250.—II. *Chapters* can, at present, be established only by the Pope,[35] but not by bishops. This applies not merely to chapters of cathedrals, but also to those of collegiate[36] churches.

251.—III. *Parishes or parochial churches* may undoubtedly be established by bishops, provided certain conditions be observed by them.[37] The nature of these conditions depends upon the manner in which parishes are established. Now, parishes are established chiefly in three ways:[38] 1, *per viam creationis*; 2, *per viam dismembrationis*; 3, *per viam unionis*. We shall briefly treat of each of these modes.

[28] Soglia, l. c., p. 205. [29] Ib. [30] Craiss., n. 334.
[31] Soglia, l. c., pp. 206, 207. [32] Craiss., n. 334.
[33] Soglia, vol. i., p. 203. [34] Cfr. Ib., pp. 209, 210.
[35] Bouix, De Capitulis, pp. 190, 191. Paris, 1862.
[36] Cfr. Phillips, Kirchenr., vol. vii., pp. 285, 286. Ratisbon, 1869.
[37] Craiss., n. 336. [38] Ib.

## ART. II.

### *Erection of Parishes "per viam creationis."*

252. The *erection* (*erectio, constitutio*) of benefices in general is thus defined: "Erectio beneficiorum est actus legitimus quo sacrum aliquod officium, vel ministerium in certa Ecclesia vel altari, a clerico obeundum, constituitur cum perpetuo reditu, quem clericus jure suo percipiat tum alimentorum et stipendii causa, tum ad ferenda onera beneficii."[39]

253. New parishes are erected *per viam creationis* when they are formed, not from portions of parishes already in existence, but from people or territory not yet assigned to any parish,[40] as happens usually *in partibus infidelium*.[41] In the United States new parishes (quasi-parishes) are still frequently established in this manner. In Europe, where the Catholic faith has ruled for centuries, and where it can therefore scarcely happen that there should be Catholics not yet aggregated to some parish, the erection of parishes *per viam creationis* can scarcely occur.[42]

254. There can be no doubt that bishops, by virtue of their "*potestas ordinaria*," can create new parishes—that is, constitute priests who shall have the care of souls in their own name (*nomine proprio*) and by virtue of their office (*ex officio*), in such districts and over such people as are not yet aggregated to any other parish.[43]

255. In establishing new parishes, whether "per viam creationis," or "per viam dismembrationis," or "per viam unionis," or otherwise,[44] the bishop is, *de jure communi*, bound to provide, as far as possible, for the suitable maintenance[45] of the pastor. This applies, of course, also to the United

[39] Soglia, vol. ii., p. 153.
[40] Bouix, De Paroch., p. 243.
[41] Craiss., n. 337.
[42] Bouix, l. c., p. 245.
[43] Ib.
[44] Ib.
[45] Craiss., n. 338.

States, as is implied in these words of the Second Plen. C. of Baltimore:[46] "Monemus sacerdotes ut non detrectent vacare cuilibet missioni si Episcopus judicet *sufficiens ad vitae decentem sustentationem subsidium* illic haberi posse."

☞ 256. According to the general law of the Church, every parish should have a *perpetual*, that is, *irremovable*, rector. In this country there are at present, according to the *Third Plenary Council of Baltimore* (n. 33), two classes of missions or quasi-parishes: those which have irremovable rectors; others which have ordinary rectors. Rectors who are irremovable cannot be deprived of their parishes, save upon trial, as outlined in the instruction *Cum Magnopere* of 1884 (Conc. Pl. Balt. III., n. 38), or in the Instruction of 1878, where the latter still obtains. Our ordinary rectors can indeed be transferred for grave and just cause,[47] but not absolutely dismissed, in punishment of crime, without the above trial.[48]

Regular priests having charge of congregations are removed by their superior *or* by the bishop, and neither is obliged to assign to the other a cause for his action. But if the regular superior removes them he should substitute others with the consent of the bishop.[49]

257. In France[50] and other parts of Europe civil governments have a voice in the formation of parishes.[51] In this country the consent of the civil government is not required for the formation of parishes, so far as purely spiritual effects are concerned. Congregations, however, in the United States, Ireland,[52] and England,[53] can, as a rule hold property

[46] Conc. Pl. Balt. II., n. 108.

[47] S. C. de P. F. *ad Dubia* circa Instr. 20 Julii 1878.

[48] Instr. S. C. de P. F. 20 Julii 1878; Resp. ad Dubia.

[49] Bened. XIV., Const. *Firmandis*, § 11, 6 Nov. 1744; C. Pl. Balt. II., n. 406.

[50] Craiss., n. 339.

[51] Phillips, vol. vii., p. 287.

[52] Syn. Plen. Episc. Hiberniae, ap. Thurles, 1850, Decret. 22, n. 5, ap. Coll. Lac., tom. iii., p. 794; cfr. Ib., p. 888; Conc. Tuam. III., cap. xvii., n. 3.

[53] Cfr. Conc. Prov. Westmonast. II., a. 1855, Decr. 8, n. 19.

safely only by conforming to the civil law on this head. Thus, congregations in the United States can, as a rule, hold possessions in their capacity of congregations only by becoming incorporated according to law.[54] And as the civil laws relative to corporations are not unfrequently opposed to the laws of the Church (*v.g.*, by vesting the title to the property in lay trustees), bishops with us are at times compelled to hold the entire Church property of the diocese absolutely in their own name—*i.e.*, in fee simple and not merely in trust.

☞ 258. *Q.* Can bishops, by virtue of their ordinary power, change parishes whose rectors are ***removable ad nutum*** into parishes whose rectors are *irremovable?*

*A.* They can. For, as we shall show farther on, the general law of the Church not only authorizes but *commands* bishops to appoint irremovable rectors for all parishes.[55] Hence, as we shall see later, the Holy See always most earnestly urges bishops in whose dioceses there are *paroeciae amovibiles*, to change them into *paroeciae inamovibiles*. In fact, the law of the Church presumes that the care of souls will be much better exercised by a rector who is *inamovibiles*, and who is therefore regarded as the *father* of his parishioners and the *shepherd* of his flock, than by a *removable* rector, who, because of his movableness, is not looked upon in law as a shepherd, in the full sense of the term. (Cf. De Angelis, l. 3, t. 29, n. 3.) *β*, p. 498.

In accordance with these principles, and the proposals made by the S. Congr. de Prop. Fide, in the Conferences held at Rome in 1883, the *Third Plenary Council of Baltimore* ordains that in every diocese the bishop shall, with the advice of his consultors, select a certain number of our mis-

[54] Nixon's Digest, p. 686, edit. 1855; cfr. Conc. Pl. Balt. II., n. 200.
[55] Conc. Trid., sess. 24, c. 13, De Ref.

sions (all of which have been thus far *missiones amovibiles*) and make them *missiones inamovibiles*, in such number, that at least one rector out of every ten will be in future irremovable.[66] However, the Council *advises* the bishops not to exceed this number, except for good reasons, within the first twenty years after the promulgation of its decrees. The words of the *Third Plenary Council* (n. 35) are: "Quae proportio (unus inter decem) ne inconsulte excedatur intra viginti primos annos post Concilium" (Plen. Balt. III.) "promulgatum." The proportion of one out of every ten was agreed upon as the minimum in the Conferences held at Rome in 1883, between the Cardinals of the Propaganda and our prelates.

Of course, in this whole question we prescind from certain cases, altogether special and exceptional, particularly where the rights of third parties are involved. Thus the Holy See (S. C. C.) has decided that where a cathedral chapter has the right to appoint and remove at its will the rector of the cathedral,[a] or where a person founding a parochial church stipulates in the act of foundation that the rector shall be removable, the bishop cannot make such rector irremovable.[b]

☞ *Q.* Can bishops, also in the United States, change parishes or missions whose rectors are *irremovable* into parishes or missions whose rectors are *removable?*

*A.* They cannot. For they cannot derogate from or dispense in the general law of the Church which forbids rectors to be made removable, as we have seen. Hence the Pope alone can make the change in question.[c] Besides, it is a general principle of law that while bishops can *ameliorate* the condition of churches, and therefore change removable rectors into irremovable, they have no power to *deteriorate*

[66] Conc. Pl. Balt. III., n. 33, 35.

[a] S. C. C. 29 Aug. 1857, Apud Lucidi, vol. iii., p. 243, n. 8, 9; ib., p. 248 sq.

[b] Pyrr. Corrad., Praxis Benef., lib. i. cap. 6, n. 270. Colon. Agr., 1697.

[c] Corradus, l. c., n. 288.

or *lower* their status,[d] and consequently are not allowed to change parishes or missions that have irremovable rectors into parishes or missions which have removable rectors.[e]

That this axiom of law holds also in the United States is expressly recognized by the *Third Plenary Council of Baltimore* (n. 34) when it enacts: "Missio cujus Rector semel inamovibilis est constitutus, in posterum semper habebit Rectorem inamovibilem."

259. What are, according to Schmalzgrueber,[57] Reiffenstuel,[58] and Ferraris,[59] the conditions required to constitute a canonical parish? 1. That it be erected by authority of the Pope or bishop;[60] 2, that it have a district circumscribed by certain boundaries fixed by the bishop; 3, that it have a rector,[61] who is irremovable,[62] and has the care of souls and the power of the *forum poenitentiale* in such manner that, *de jure ordinario*, he alone and no one else is possessed of them; 4, that the parish priest be bound, and that by virtue of his office, to administer the sacraments to his parishioners, and that the latter in turn be obliged, in a measure, to receive them from him; 5, that the rector exercise the *cura* by virtue of his office—that is, in his own name, and not merely as the vicar of another. However, canonical parishes may be administered by, or actually in charge of, rectors, removable or irremovable, who are merely the vicars of the parish priest *in habitu*. De Angelis seems to maintain that this is the case with our parishes; the bishop having the *cura habitualis*, and being therefore the parish priest *in habitu* of each and

[d] According to the axiom: "Ut ecclesiastica beneficia *sine diminutione conferantur*," lib. 3, Decr. tit. 12.

[e] Arg. C. Trid., sess. 24, c. 13, De Ref.

[57] L. iii., tit. 29.

[58] L. iii., tit. 29, n. 3; cf. infra, n. 641.

[59] V. Parochia, n. 3.

[60] Can. Nullus 11, causa 16, q. 7.

[61] Can. Sicut 4, caus. 21, q. 2.

[62] Reiff., l. c., n. 7.

every parish in the diocese, thus retaining the titles of the parishes and giving but the administration or *cura actualis* to our rectors, who are consequently vicars of the bishop.[63]

260. Are our congregations or churches canonical parishes? De Angelis seems to hold the affirmative. His argument is: A canonical parish is a church set apart by the bishop, and having a population living within certain fixed limits, and in charge of a priest or rector, who alone can by virtue of his office preach and administer the sacraments and other spiritual offices to the parishioners. Therefore, when the bishop has designated a church and assigned it people living within certain fixed limits, and, moreover, appointed a rector to have sole charge, he has erected a canonical parish. Nor is it necessary that the bishop, in erecting a canonical parish, should expressly mention irremovability, for it inheres in benefices proper, and consequently also in canonical parishes, by virtue of the common law of the Church.

261. Now, continues this eminent canonist, in the United States parishes have generally been assigned fixed limits, and are governed each by one rector, who has sole charge; therefore, etc.[64] However, it is the general impression here that our congregations, except perhaps in some parts of California, are not canonical parishes.

## ART. III.

### *Erection of Parishes per viam dismembrationis—Division of Parishes also in the United States.*

262. *Definition.*—Parishes are erected *per viam dismembrationis* or *divisionis*, when certain portions are taken away from one or several old parishes in order to form new ones; or simply when old parishes are divided in order to form new

[63] De Angelis, Prael., lib. i., tit. 28, p. 54. [64] Ib.

ones.[65] It is, generally speaking,[66] forbidden to divide benefices or parishes.[67] We say "*generally speaking*," for bishops may, under certain conditions, divide parishes, even against the will of the respective pastors.[68]

☞ 263. Now, what are these conditions? In other words, when and how can a bishop divide a parish? (1) Only for *just* and *reasonable cause*, (2) which must be expressly stated, (3) and *verified*, *i.e.*, proved to exist by public documents; (4) with the *advice* of the rector of the parish which is to be divided; (5) with the *consent* of the cathedral chapter; (6) the limits of the new parish must be fixed, (7) and a competent means of support assigned it; (8) the parish to be divided must not be crippled by the division. Let us briefly explain each of these conditions.

We say, first, *only for just and reasonable cause*. But what is to be considered a just cause for the division of a parish? The Council of Trent[69] thus answers: "As regards those churches to which, on account of the distance or the difficulties of the locality, the parishioners cannot, without great inconvenience, repair to receive the sacraments and to hear the divine offices, the bishops may, even against the will of the rectors, establish new parishes." Parishes, therefore, may be divided for two reasons: 1, when the parishioners live so far from the church as to be unable,[70] without great inconvenience, to repair to it, in order to assist at Mass and receive the sacraments; 2, when parishioners, though living near the church, cannot, without great difficulty, go to it by reason of the difficulties of the locality,[71] *v.g.*, because rivers, railroad-crossings, and the like intervene between a certain number of the parishioners and the church.[72] Now, either of these causes is of itself a sufficient reason for the di-

[65] Craiss., n. 337.
[66] Reiff., lib. iii., tit. xii., n. 22, 23.
[67] Cfr. Phillips, Kirchenr., vol. vii., p. 300.
[68] Craiss., n. 341.
[69] Sess. xxi., c. 4, de Ref.
[70] Phillips, Kirchenr., vol. vii., p. 302.
[71] Bouix, De Paroch., p. 254.
[72] Cfr. Ib., p. 259.

vision of a parish and the formation of a new one.[73] Observe, however, that the distance or the obstructions of the locality must be such as to make it very difficult for parishioners to reach the church; in a word, they must be such as to cause a *magnum incommodum.*[74] No precise rule, however,[75] can be laid down as to what distance or difficulty of access to the church is required. The bishop is the competent judge.[76] A distance of two miles, or according to some, of one mile and a half, is deemed sufficient; even a smaller distance may suffice.[77]

264. It is not lawful to divide a parish merely because of the great number of parishioners; for in this case the pastor can only be compelled by the bishop to take as many assistant priests as shall be needed to supply the wants of the parish.[78]

☞ 265. We say, second, *which must be expressly stated;* in other words, the bishop is obliged to inform both the chapter and the rector of the parish to be divided, and others interested, of the specific cause on account of which he wishes to divide the parish, so that it may be seen whether the proposed division is justified by sufficient reasons, and to enable the rector to appeal, if he wishes.[79]

We say, third, *verified;* for, as Lotterus[80] and canonists in general say, the mere assertion of the bishop that there is a sufficient cause for the proposed division is of no value. The existence of the cause must be *positively proved* by a previous investigation. This inquiry is to be conducted in a juridical, though summary, not formal, manner. Thus it is

[73] Bouix, De Paroch., p. 259. [74] Ib. pp. 250 and 258.
[75] Ferraris, V. Dismembratio, Novae additiones ex aliena manu., n. 12.
[76] Ferraris V. Dismembratio, Novae additiones ex aliena manu., n. 13.
[77] Bouix, l. c., pp. 264, 265.
[78] Craiss., n. 344; cfr. Conc. Trid., sess. xxi., c. 4, de Ref.
[79] Lotterus, De Re Benef., l. 1, q. 28, n. 24; Leur., l. c., q. 951.
[80] L. c., n. 33.

sufficient for the bishop to go to and inspect the place or parish to be divided. But the entire investigation and its results must be written down and put on public record, so that there will be legal proof of the existence of a sufficient cause. The reason is that the division of a parish is regarded as a true alienation of ecclesiastical property, and is therefore forbidden by law except where there is sufficient cause. Now, when the law forbids a thing to be done except for sufficient cause, the existence of such cause must be proved *ex actis, i.e.*, from the authentic and public records of the inquiry."[1] It will be seen that this verification is made in a simple and summary, though judicial, manner; that consequently the rector is to be cited and heard juridically, etc.

We say, fourth, *with the advice of the rector*, etc.; that is, the rector, owing to the loss or damage he is about to sustain by the proposed division, and because it is of public interest that churches should not be impoverished or crippled by divisions, must be summoned in order that he may give his opinion on the proposed division, and in general explain his reasons, if he have any, for being opposed to the division. This summoning of the rector is obligatory on pain of the nullity of the division. Yet the bishop, though bound, on pain of nullity, to listen to the rector's objections, and to ask his opinion or advice, is not obliged to follow this advice, and therefore may decree the division, even against the will of the rector and notwithstanding the latter's objections. But if the bishop does so, the rector has a right to appeal, though only *in devolutivo*, either to the Metropolitan or the Holy See. And if, upon appeal being made, the bishop does not prove the existence of a sufficient cause, or if the appellant shows that the requisite formalities (*solemnitates*), have not been observed, the division will be annulled. It should be observed that not only the rector, but also the

[1] Leur., For. Benef., p. 3. q 951; Card. de Luca, De Benef., disc. 45, n. 6.

parishioners of the parish to be divided, and others interested, can appeal against the division; for their interest is at stake, and therefore they can appeal.

We say, fifth, *with the consent of the cathedral chapter.* This will be more fully explained further, when we come to treat of *diocesan consultors.*

We say, sixth, *the limits of the new parish must be fixed;* in other words, the bishop must fix the limits of the new parish, either by assigning it a certain district or at least certain families.

We say, seventh, *a competent means of support should be assigned the new parish.*[82] This should be done with as little prejudice to the mother-church as possible. Hence the bishop can, and should if need be, compel the parishioners of the new church to contribute as much as is necessary for the support of the rector, and the repairs and maintenance of the church.[83] He may also, especially where the parishioners of the new church are poor and the mother-church is very rich, assign part of the income of the mother-church to the new parish.[84]

We say, eighth, *the parish to be divided must not be crippled by the division.* Thus Pope Alexander III., in his celebrated constitution *Ad audientiam,* which was renewed by the Council of Trent,[85] distinctly lays down the law that a parish can be divided only when its income is sufficiently large to meet all its expenses, without the help of the portion or district which is to be taken from it by the division.[86] In fact, it is an axiom of law that it is not lawful to uncover one altar in order to cover another—"*Non licet discooperire unum altare, ut alterum cooperiatur.*" (Reiff. l. iii. t. 5. n. 101.)

[82] Cap. *Ad audientiam,* cit.; Conc. Trid., sess. xxi., c. iv., De Ref.

[83] Leuren., For. Benef., p. 1, q. 159. n. 1; Card. de Luca, De Decim., disc. 12, n. 8.

[84] Conc. Trid., sess. xxi., c. iv., De Ref.; Leuren., l. c., n. 1.

[85] Sess. xxi., c. iv., De Ref.

[86] Arg. Cap. Vacante, xxvi., De praeb. (iii., 5), Leuren., l. c., q. 158, n. 5.

Ninth, the new church or parish must consider herself as the *daughter—filia*—and the old church as the *mother-church—ecclesia matrix*,—and in consequence pay her annually a certain sum of money or tribute, to be fixed by the bishop as a sign of respect and dependence.[87]

Tenth, the *jus patronatus*, or the right to present the rector of the new parish, must be reserved to the rector of the mother-church, as a sort of compensation for the loss sustained by the division.[88] However, according to some canonists, *v.g.*, Lotterus, Corradus, this right is reserved to the mother-church only when it has contributed something toward the endowment or support of the new parish, but not otherwise.[89]

266. It would seem that, strictly speaking, these conditions and formalities must be observed, on pain of nullity of the division, only when there is question of the division of canonical parishes. Now, parishes in the United States, save, perhaps, certain parishes in the province of San Francisco,[90] are all regarded without exception as missions or quasi-parishes, and not as canonical parishes, even where their rectors are irremovable.[91] The same holds true of England,[92] and, in general, of all missionary countries. Hence, in the division of parishes, or rather missions, here and in England, and in general in missionary countries, the bishop may laudably indeed comply with the above conditions and formalities as far as practicable, but yet he is not obliged to do so, under pain of nullity, save in so far as these conditions are based upon equity and natural justice, or are imposed by statutory law, that is, by special or local law.

[87] Cap. *Ad audientiam*, de Eccl. aedif. (iii. 48); Phillips, Kirchenr., vol. vii., p. 291; Leur., l. c., n. 7; Lott., l. c., n. 46.

[88] Cap. *Ad audientiam*, cit.; Phillips, Kirchenr., vol. vii., p. 291.

[89] Leuren., l. c., q. 157, n. 6; Lotterus, De Re Benef., l. 1, q. 28, n. 46.

[90] Infra, n. 654; Conc. Prov. S. Francisci I., Decret. XVI.

[91] Conc. Pl. Balt. III., n. 24.

[92] Leo XIII., Const. *Romanos Pontifices*, 1881, § *Profecto*.

☞ 267. *Application of the Above Principles to the U. S.*— We have just said, *save when these conditions are imposed by statutory law.* Now, what is our statutory law in this matter? The *Third Plenary Council of Baltimore*, recognized by the Holy See, Sept. 21, 1885, enacts that when parishes are divided, even though they have irremovable rectors, the new parish or mission will be *independent* of the mother-church.[93] Herein our statutory law differs from the general law, which, as we have seen, preserve a certain *dependence* of the daughter-church upon the mother-church. Next, the *Third Plenary Council* decrees that our missions or parishes, whether they have irremovable or only simple rectors, can be divided only with the advice of the consultors, and also with the advice of the rector of the mission which is to be divided.[94] These two conditions necessarily imply nearly all the formalities required for the division of canonical parishes enumerated above. For the previous advice of the consultors and rector is prescribed in law, in order that it may be seen whether there is a cause for the division, whether it is sufficient, whether it is properly established, whether the mother church is not unduly crippled by the division, etc.

268. *Q.* Is it allowed to appeal against the division of canonical parishes?

*A.* According to the general law of the Church, as in full force at present all over the world, it is always lawful for the parish priest, parishioners, and others interested, to appeal, though only *in devolutivo*, against the action of the bishop ordering a parish to be divided, and that whether he proceeds as Ordinary or as delegate of the Holy See. This is proved from the Const. *Ad Militantis* of Pope Benedict XIV., which enumerates among the cases where a devolutive appeal is permitted the following, under Article XI.: "Item

[93] Conc. Pl. Balt. III., n. 34.

[94] Ib. n. 20.

a decretis seu mandatis per quae Episcopi, etiam uti Apostolicae Sedis Delegati . . . etiam invitis Rectoribus, procedant ad constitutionem novarum Parochiarum . . . ubi ob locorum distantiam, sive difficultatem, Parochiani, sine magno incommodo, ad percipienda sacramenta, et divina officia audienda accedere non possunt."[95]

*Q.* Is it permitted to appeal against the division of missions or quasi-canonical parishes, with us, in England, Scotland, and other missionary countries?

*A.* It is, and that whether the bishop proceeds as Ordinary or as delegate of the Holy See. This is evident from the fact that the Const. *Ad Militantis*, which gives the right of appeal against the division of parishes, as we have just seen, has been expressly made obligatory in the United States, by the S. C. de Prop. Fide, in its Instr. *Cum Magnopere*, art. xxxvi. The words of the S. C. de Prop. Fide are: "In appellatione observentur normae expressae in Const. Sa. Me. Benedicti XIV. *Ad Militantis*, diei 30 Martii 1742."

It is also proved from the Const. *Romanos Pontifices* of Pope Leo XIII., as authentically interpreted by the S. C. de Prop. Fide, at our humble request. The words of the Supreme Pontiff, in the said Const. *Romanos Pontifices*, which is now obligatory also in this country, are: "Respondemus: licere Episcopis Missiones dividere . . . Quo melius autem missioni quae dividenda sit, ejusque administris prospiciatur, volumus ac praecipimus ut sententia quoque rectoris exquiratur, quod jam accepimus laudabiliter esse in more positum; quod si a religiosis sodalibus missio administretur, Praefectus Ordinis audiatur; *salvo jure appellandi, si res postulet, a decreto episcopali ad Sanctam Sedem in devolutivo tantum*."

It is certain, therefore, that all our missionary rectors, secular and regular, movable and irremovable, have the

[95] Cf. Bouix de Paroch., p. 280.

right to appeal *in devolutivo*, against the action of the Ordinary dividing their missions or quasi-parishes.

We have said, *in devolutivo*. In other words, the appeal does not stay or suspend the bishop's decree or action dividing the parish or mission, but merely transfers the whole case for adjudication to the judge of appeal, whose right and duty it is to confirm, modify, or revoke the bishop's decree.[96]

☞ 269. *Q.* To whom is the appeal to be made?

*A.* 1°. A distinction is to be drawn between the division of exempted and that of non-exempted parishes (with us, missions or quasi-parishes).[97] When the bishop divides exempted parishes or missions, that is, parishes or missions which are under the control of regulars who enjoy the privilege of exemption, the appeal cannot be made to the metropolitan, but must necessarily be made directly to the Holy See.[a] The reason is that exempted regulars are subject, not to the bishop, but directly to the Holy See. Consequently the bishop can divide their parishes or missions, not by his *ordinary* power, but only by *Papal delegation*, as conferred upon him by law, that is, by the Council of Trent.[b] Now it is a principle of canon law that an appeal must always be interposed from the superior delegated to the superior delegating, and from the lower to the higher authority, but not from the higher to the lower. But the bishop, in the case, acts as delegate of the Pope, and is therefore, as such, not inferior to the metropolitan.

2°. But when the bishop divides non-exempted parishes or missions, that is, parishes or missions in charge of secular Priests, or also of religious communities which do not enjoy the privilege of exemption, the appeal can be interposed to

[96] Bouix, De Paroch, p. 280.
[97] Leur. For. Ben., p. 3. q. 959.
[a] Fagnan. ad cap. 3 de Eccl. aedif., n. 45, 49.
[b] Conc. Trid., sess. 21, c. 4, De Ref.

the metropolitan, or of course also directly to the Holy See,[c] and that even though the bishop proceeds as *delegatus sedis apostolicae*.[d] For, in the case, the bishop can proceed both by virtue of his ordinary jurisdiction and as delegate of the Holy See. Now in all cases where he can act in virtue of this twofold authority, the Papal delegation or the power delegated by the Holy See has for its object merely to assist and to strengthen the ordinary jurisdiction of the bishop, but not to supersede it, or to impair the general law of the Church, either in regard to appeals or any other matter.[e] Here it may be observed that the bishop is authorized by law, *v.g.*, by the Council of Trent, to act as delegate of the Holy See, either with regard to the (*a*) secular clergy or also non-exempted religious, (*b*) or exempted regulars. In the latter case, he can act solely by Papal authority; in the former, he can proceed both by his ordinary and also by Papal authority.

## Art. IV.

### *The Erection of Parishes per viam Unionis.*

270. A parish is established per viam unionis when several parishes[f] are united into one so as to form, under a certain aspect, a new parish.[g] Now, parishes or benefices are united chiefly in three ways: *per aequalitatem, per subjectionem*, and *per confusionem*. 1. The *unio per aequalitatem* or *unio aeque principalis*[19] effects no change whatever in the status of the parishes thus united,[20] save that they are governed by one

[c] S. C. EE. et RR., 16 Oct., 1600, decretum *ad tollendas*, § vii.

[d] Stremler, Des Peines Eccl p. 445

[e] De Brab., vol. ii., p. 440.

[f] Bouix, l. c., p. 244.

[g] Cfr. Craiss., n. 337.

[19] Cfr. Phillips, Kirchenr., vol vii., p. 320.

[20] Ferr. V. Unio Benef., n. 1.

and the same pastor.[100] It may, in a certain sense, be said that, in the United States, churches or congregations are not unfrequently united in this manner; for there are many instances where two or three congregations, though administered by one and the same pastor, are, nevertheless, in everything else independent one of the other; hence, too, the accounts of each of these parishes are kept separate by the pastor.

271.—2. The "*unio per subjectionem*" (also *unio accessoria, unio plenaria*[101]) is effected "quum una ecclesia alteri ecclesiae conjungitur, eique tanquam accessorium principali subjicitur." [102] Churches thus united lose their name or title, and their revenues are transferred to the church to which they are annexed.[103] Small out-missions in the United States, where churches are built, may in a measure be said to be thus united to the principal church where the pastor resides.

272.—3. The *unio per confusionem* (*unio translativa, unio extinctiva*[104]) occurs "quum suppressis titulis duarum aut plurium ecclesiarum, nova inde ecclesia creatur, ut si ex duabus ecclesiis parochialibus, quorum reditus valde tenues sint, una tertia ecclesia parochialis, eaque novo titulo erigatur." [105]

273. These three kinds of unions can be made use of only when parishes are united to other parishes or benefices with the care of souls, but not when parishes are to be united with an ecclesiastical corporation, *v.g.*, a chapter, monastery, college, and the like; unions in the latter case are made differently.[106]

274. *Q.* Who has power to unite benefices and churches?

*A.*—1. Only the Pope can unite bishoprics. He can,

[100] Phillips, Lehrb., p. 140. [101] Cfr. Phillips, Kirchenr., vol. vii., p. 322.
[102] Soglia, l. c., p. 157. [103] Ib. [104] Cfr. Phillips, l. c., p. 323.
[105] Soglia, l. c. [106] Soglia, l. c., p. 158; cfr. Phill., Lehrb. p. 141.

moreover, unite all[107] other kinds of benefices. 2. The bishop can, for legitimate causes, unite benefices and churches in his diocese. An archbishop, however,[108] cannot unite benefices in the dioceses of his suffragans. 3. The chapter, *sede*[109] *vacante*, and hence the capitular vicar (with us, the administrator), can unite those benefices and churches which the bishop can unite. 4. The vicar-general, however, has[110] no power to unite benefices, save when specially commissioned to that effect by the bishop.

275. *Q*. What conditions are required in order that parishes may be lawfully consolidated or united by the bishop?

*A*. According to the common opinion of canonists, three conditions are essential: 1, a just cause, *v.g.*, if the parishes are too poor to support separate[111] pastors; 2, citation or summoning of all the parties interested, as explained in the case of the division of parishes; 3, the consent[112] of the cathedral chapter; the consent of the people or faithful of the parishes to be united is not required.[113]

276. *Q*. Has the power of uniting parishes and benefices, vested in bishops by the *jus commune*, been restricted by the Council of Trent?

*A*. We said above that bishops, by virtue of the *jus com.*, have power to unite parishes and benefices situate in their dioceses; they can, moreover, according to the Council of Trent, make these unions not only in their capacity of Ordinaries, but also as *delegati S. Sedis*, and even though the parishes to be united are reserved to the Holy See.[114] This power of bishops to unite parishes is, however, not without restrictions.[115] Thus,

[107] Reiff., lib. iii., tit. 12, n. 53. [108] Craiss., n. 360. [109] Ib
[110] Ferraris, V. Unio Benef., n. 13. [111] Soglia, vol. ii., p. 159.
[112] Bouix, De Paroch., p. 285. [113] Reiff., l. c., n. 76.
[114] Bouix, De Paroch., pp. 286, 287.
[115] Cfr. Phillips, Kirchenr., vol. vii., p. 325, seq.

277.—1. A bishop can unite parishes only with other parishes, but not[116] with monasteries, abbeys, hospitals,[117] colleges, and the like.

278.—2. A parish in one diocese cannot be united by the bishop to a parish in another diocese, lest the same parish should become subject to two different bishops.[118] In the United States it sometimes happens—*v.g.*, near the confines of two dioceses—that a church or congregation in one diocese is attended by a priest of another diocese living near the confines or boundaries of the two dioceses, and having "*faculties*" from each of the respective bishops. This union of congregations belonging to two different dioceses is not, strictly speaking, unlawful in this country, because our parishes are missions rather than canonical parishes or benefices, to which alone the above Tridentine restriction applies. We say, *strictly speaking;* because these unions, unless necessary, seem to be opposed to the *spirit* of the Tridentine decree.

279.—3. Again, bishops can unite parishes only permanently, but not temporarily, *v.g.*, for the lifetime[119] of the incumbent. To understand this better, we must remember that the union of parishes is of two kinds: one is permanent (*unio perpetua*), the other is but temporary (*unio temporalis*). A union is permanent "quando exprimitur ut perpetuo duret"; that union is temporary, on the other hand, "quae fit ad tempus, *v.g.*, ad vitam ejus cui conceditur."[120]

280. We said above that bishops can make *uniones perpetuas* only. From this it must not be inferred, however, that when parishes are once united by bishops they cannot again be disunited by them. For, though the unio of parishes, as made by a bishop, should be *unio perpetua*, it need not on that account be "*unio indissolubilis.*"

[116] Reiff., lib. iii., tit. 12, n. 61.
[117] Soglia, vol. ii., p. 160; cfr. Conc. Trid., sess. xxiv., c. xiii., d. R.
[118] Ib.; cfr. Conc. Trid., sess. xiv., c. ix., d. R.
[119] Reiff., l. c., n. 58.
[120] Ib., n. 38, 37.

281. This brings us to the *disjunctio*[131] *beneficii* or *parochialis ecclesiae.* Parishes which have been united may again, under certain conditions, be disunited by the bishop, and thus reinstated in their former condition.[132] This severance or dissolution of the unio is named "*disjunctio beneficii.*"

282. *Q.* We ask, 1, for what causes; 2, in what manner or under what conditions; 3, by whom, is the *disjunctio* made?

*A.*—1. *Causes:* Parishes that have been united may be disunited when the causes for which they were consolidated have ceased to exist, *v.g.*, if the number of parishioners has grown larger, or if the revenues of the parish have increased, and the like.[133]

2. *Conditions:* The formalities or conditions to be observed in the *disjunctio* are the same as those required for the *unio*—namely, 1, verification of the cause; 2, summoning of all persons interested in the *disjunctio;* 3, consent of the chapter.[134]

3. The *disjunctio* is to be made by authority of the bishop. Bishops can disunite parishes—*i.e.*, dissolve unions of parishes—not only when made by themselves, but also when made by their predecessors, or even by the Holy See.[135]

By whom are civil offices of the Federal Government created in the United States? The President of the United States can create no office, because the Constitution requires it to be established by law.[136]

[131] Soglia, vol. ii., p. 162. [132] Ib. [133] Ib. [134] Ib. [135] Ib.
[136] Walker, Introd. to American Law, p. 100.

# CHAPTER VII.

## ON APPOINTMENTS TO ECCLESIASTICAL OFFICES OR BENEFICES (DE INSTITUTIONE CANONICA).

### ART. I.

### *Of Appointments in General (de institutione canonica in genere).*

283. By the conferring of an ecclesiastical office (*institutio, concessio, collatio, provisio, donatio*) we here mean the appointment to a vacant ecclesiastical office of whatsoever kind,[1] made in a lawful manner, by authority of the proper ecclesiastical[2] superior. The word *institutio* is, in a broad sense, usually applied to any canonical appointment whatever;[3] in a strict sense, only to appointments where the person to be appointed is designated by the *patronus*[4]—*i.e.*, the person vested with the *jus patronatus*—and where, consequently, the ecclesiastical superior confers the office, but does not designate the person[5] upon whom it is to be conferred.

284. That a person, in order to hold or fill an ecclesiastical office, must be properly or canonically appointed to it, is proved from the Sacred Scriptures,[6] the Council of Trent,[7] and canon law.[8]

285. The conferring of or appointment to an ecclesiastical office, being an act by which ecclesiastical rights and

[1] Craiss., n. 370.

[2] Craiss., n. 370.

[3] Phillips, Lehrb., § 77, p. 142.

[4] Ib.; cfr. Devoti, lib. i., tit. v., lect. iv., § 47

[5] Phillips, l. c., p. 144.

[6] Jo. x. 1, Epist. ad Hebr. v. 4.

[7] Sess. xxiii., can. 7.

[8] Cfr. Craiss., n 371.

offices are bestowed, and being therefore an exercise of spiritual authority, can[9] be made only by ecclesiastical superiors—*i.e.*, the prelates of the Church—not by lay persons. Kings, it is true, have sometimes been empowered by Popes to confer ecclesiastical benefices; but this was only by[10] special privilege. Lay persons cannot, as such, confer ecclesiastical offices.

286. From this it follows: 1. Investitures in the Middle Ages were deservedly condemned[11] by Popes Gregory VII. and Callistus II. 2. In like manner, Pope Innocent XI. was very justly indignant at the concession made by the French bishops in 1681, by which the King of France was to be allowed[12] to confer all those benefices of his kingdom to which no jurisdiction was attached. 3. All those persons are to be looked upon as intruders who, being rejected,[13] even though unjustly, by the proper ecclesiastical superior, have recourse to the secular power to obtain, or rather invade, ecclesiastical offices.

☞ 287. *Q.* Can one who is elected, presented, or nominated to a prelacy or bishopric enter upon its administration under some title or other before he has obtained and properly made known the bulls of confirmation from the Holy See?

*A.* We premise: It is necessary to distinguish between the case of one who is already the vicar-capitular (with us, administrator) of the vacant diocese, at the time he is nominated, presented, or recommended to the Holy See, and one who is not the vicar-capitular—with us, administrator—of the vacant diocese, at the time he is presented to the Holy See for the vacant see.

We now answer: I. In regard to the second case, namely, of one who is not already vicar-capitular, it is certain that

[9] Soglia, vol. ii., p. 166.
[10] Ib.
[11] Craiss., n. 372
[12] Ib., n. 373.
[13] Ib., n. 375.

persons who are, in the proper sense of the term, elected to episcopal sees can neither lawfully nor validly engage in the administration of such sees, under any pretext or guise whatsoever,—*v.g.*, as vicar-capitular,—before they have obtained and exhibited their apostolic letters of confirmation. Thus the decretal *Avaritiae* 5 *de elect. in* 6°, issued by the Œcumenical Council of Lyons, held under Gregory X. in 1274, enjoins: "Sancimus ut nullus administrationem dignitatis ad quam electus est, priusquam celebrata de ipso electio confirmetur, sub oeconomatus vel procurationis nomine, aut alio de novo quaesito colore, in spiritualibus vel temporalibus, per se vel per alium, pro parte vel in totum, gerere vel recipere, aut illi se immiscere praesumat." Those who act contrary to this law forfeit, *eo ipso*, all rights of their election, and become ineligible to any prelature whatsoever.[17] Again, Pope Boniface VIII.[18] (1300) enacts that persons *qui apud Sedem Apostolicam promoventur*, besides *receiving* their bulls or letters of confirmation from the Holy See, must also *show* them to the proper parties, and that "nulli eos (electos) absque dictarum litterarum ostensione, recipiant, aut eis pareant, vel intendant." Whatever is done by persons who enter upon the government of a diocese contrary to any of these prescriptions, is *ipso jure* null and void.[19] Finally, all the above laws were confirmed and strictly inculcated by Pope Pius IX., both in his *Const. Apostolicae Sedis*, Susp. I., and in his Apostolic Letters, *Romanus Pontifex*, 1873.[20]

From what has been said, it follows that a person elected as above cannot, even in case the vicar-capitular—with us, administrator—dies, resigns, or is removed, be chosen by the chapter or other party having the right to make the

[17] Reiff., lib. i., tit. 6, n. 40 sq.; Bouix, De Episc., vol. i., p. 249, 264 sq.
[18] Cap. *Injunctae* 1, De Elect. inter Extrav. com. (i. 3).
[19] Cap. *Injunctae* cit.
[20] Acta S. Sedis, vol. vii., pp. 401, 40? sq.

appointment, as the vicar-capitular or administrator of the vacant diocese. Thus Pope Pius IX., in the above constitution *Romanus Pontifex*, expressly decrees: "Decernimus ut si interea vicarius-capitularis decesserit, aut sponte suo muneri renuntiaverit, aut ex alia causa officium ipsum legitime vacaverit, tunc capitulum, vel capitulo deficiente, qui potestatem habet deputandi vacantis ecclesiae administratorem, novum quidem vicarium vel administratorem eliget, *nunquam vero electum in episcopum a capitulis aut a laica potestate* nominatum," [21] etc.

The object of these severe laws is to prevent all attempts at *intrusion* of bishops, or at forestalling the action of the Holy See, or at coercing, so to say, the Holy See into confirming a nominee on the ground that once in possession, he should not be disturbed, but confirmed, in order to avoid greater evils.[22]

288. Whether the above applies not only to those who are elected by chapters or nominated by civil rulers, but also to those who with us are proposed[23] to the Holy See, in the manner laid down by the *Third Plenary Council of Baltimore*, seems controverted. For, on the one hand, it may be said that the decretal "*Injunctae*" speaks not merely of such as are elected, but, in a general manner, of all those qui promoventur apud sedem apostolicam; that candidates, with us, who are proposed to the Holy See, evidently belong to the class of those *qui apud apostolicam promoventur*, and are consequently included in the above law.[24] On the other hand, however, it may be argued that the law in question does not expressly include our candidates, and therefore should not be extended to them, since *odia sunt restringenda.*

289. In favor of this latter view it may be said that the decretal *Nihil* 44, *De Electione*, issued by Pope Innocent III. in the Lateran Council (ann. 1215), ordains that persons

[21] Acta S. Sedis, vol. vii., p. 404. [22] Reiff., l. i., t. 6, n. 37.
[23] See our Notes, p. 93 sq. [24] Cfr. Bouix. De Episc., vol. i., pp. 268, 269.

elected may administer the diocese to which they were elected even prior to obtaining the bulls of confirmation,[25] *si sint extra Italiam, atque id deposcat dioecesis necessitas aut utilitas.*[26] However, to this it may be retorted: 1. It is a controverted question among canonists whether the decretal *Nihil* was not entirely revoked by the subsequent decretals *Avaritiae* and *Injunctae*, and whether it is therefore of any force at present.[27] 2. Even though we admit that the decretal *Nihil* is still in force, yet its provisions are applicable to those appointees only who are outside of Italy and are unanimously elected by chapters,[28] but not to those who are nominated or proposed by temporal rulers or presented by the clergy and bishops in the United States. In any case, therefore, the decretal *Nihil* relates merely to several dioceses of Germany, where alone bishops are still elected by the canons of cathedral chapters.[29] Whatever may be said, it is certain that no priest in the United States, who has been presented to the Holy See for a vacant bishopric, can assume the administration of such diocese as bishop elect, before he has received and exhibited—*v.g.*, to the administrator of the vacant see—the Papal brief of his appointment.

290. II. We come now to the first case—namely, of the person who is already vicar-capitular or administrator of the vacant see at the time he is commended or presented to the Holy See for such diocese. We ask, therefore: Do the above laws apply also to this first case? In other words: Can those who are already administrators of vacant dioceses, also in the United States, at the time they are nominated or presented to the Holy See for the vacant diocese, continue to administer the vacant diocese for which they are nomi-

[25] Cfr. Soglia, vol ii., p. 64.

[26] Ap. Bouix, l. c., p. 271 seq.

[27] Ap. Bouix, l. c., p. 266.

[28] Ib., pp. 271, 272; cfr. ib., p. 266.

[29] Bouix, l. c., p. 266.

nated, before they have received and exhibited their bulls (with us, briefs or letters) of confirmation from Rome?[30] The question is controverted. De Angelis,[31] Santi,[32] and others hold the affirmative, chiefly on the ground that the above decretals *Avaritiae* and *Injunctae*, as confirmed by Pope Pius IX., speak merely of those who *attempt to enter upon* administration of the vacant see, but not of those *who are already in possession* of the administration of the diocese at the time they are proposed or nominated for it, and consequently not of the vicars-capitular or administrators in question.

291. Reiffenstuel[a] and others maintain the negative, principally because the above decretals do not expressly make any distinction whatever between those who are vicars-capitular and administrators at the time of their nomination, and others who are not, but decree in general that no one who is presented for the vacant see shall engage in its administration before he has received and shown the apostolic letters of confirmation.[b]

292. Whatever may be said respecting the controversy, it seems that as far as regards this country, Ireland, England, and Canada, the affirmative opinion is the more probable. For the presentation of candidates, as made in these countries, is not an *electio*, *nominatio*, or *praesentatio* in the canonical sense

[30] So far as concerns the United States, the brief or apostolic letters of confirmation are usually sent by the Prefect of the S. C. de P. F. to the metropolitan of the province comprising the vacant see, and by him to the bishop elect. [31] Prael., lib. i., t. 5 and 6, n. 13; id., lib. v., tit. 28, n. 23.

[32] Lib. i., t. 28, n. 68. [a] Lib. i., t. 6, n. 43.

[b] The *Schema* de Sed. Ep. vac., cap. i., of the Vatican Council proposed to decide the question as against allowing administrators to continue the administration after their nomination. The words of the *Schema* are: "Si ipse vicarius capitularius certum nuncium habuerit de sua electione, nominatione seu praesentatione ad praedictam vacantem ecclesiam, *eo ipso ab officio cesset, et capitulum ad novi Vicarii deputationem deveniat.*" Martin, Doc., p. 133; id., Arbeiten, etc., p. 88.

of the term. To be elected, nominated, or presented, in the true sense, the candidate should be either elected by the chapter or nominated by the civil authority, not on a list of three or more, but all alone. In the countries mentioned the candidates will be three in number, none of whom will know whether he is to be appointed by Rome. Should such an uncertain presentation debar the administrator, whose name is on the list, from continuing in office, even though he knows that he is on the list? Moreover, according to the universal practice prevalent here, in Ireland and England, administrators who are put on the list continue in office. This practice is known at Rome, and yet has never been reprobated.

☞ To sum up: 1. It is certain that with us, as elsewhere, no one who has been presented to the Holy See for a vacant diocese can enter upon its administration *as bishop-elect*, or, as such, perform even the slightest act of jurisdiction, before he has received and shown the apostolic letters of his appointment. 2. It is disputed whether candidates in the United States, who are not already administrators of the vacant see at the time they are recommended to the Holy See for it, can be appointed administrators after their commendation; but it appears more probable that they can *continue* to act as administrators, in case they had been already appointed as such, before their commendation.

293. Canonists, however, commonly teach that these persons may assume the administration of the diocese even before they receive confirmation from Rome, especially in two cases, 1, when[33] this is done by special consent of the Pope; 2, or by virtue of privilege.[34] Observe, that a bishop elect cannot exercise *any act whatever*[35] of episcopal jurisdiction—*v.g.*, make appointments, etc.—before he has received and exhibited the bulls of his appointment; on the other hand, he can assume the administration in full of his diocese as soon as[36] he has shown the bulls of his appointment (in

[33] Reiff., l. i., tit. 6, n. 46.
[34] Ib., n. 47.
[35] Ib., n. 36.
[36] Craiss., Man. n. 385.

this country, *v.g.*, to the bishop's council), even before he has received consecration or taken possession of his see (*possessionis assumptio, inthronizatio*[37]). He may exhibit the bulls and take possession of his see either personally or by proxy.[38]

294. *Q.* Should appointments to ecclesiastical offices be made in writing?

*A.* The appointment (*institutio canonica*) is to be made either by the Supreme Pontiff or it is made by bishops. In the first case, it should be[39] executed and given the appointee in writing—*i.e.*, in formal and canonical letters of appointment (*litterae provisionis, litterae confirmationis, litterae institutionis*); in the second case—namely, when persons are appointed by bishops (*v.g.*, to a parish)—it does not appear necessary[40] for the validity of the appointment (*ad valorem institutionis*) that it should be in writing. When we say "*in writing*," we mean not an ordinary, even though official, letter from the bishop to the appointee, but a formal instrument,[41] properly—*i.e.*, canonically—drawn up, signed, sealed, and delivered (*litterae provisionis*). We said above, "for the *validity* of the appointment"; for it seems that, at the present day, appointments by bishops, in order to be *lawful*,[42] should be in writing; this, however, holds, at least strictly speaking, only of appointments to *canonically* established offices or parishes, but not, at least in the strict sense of the word, of appointments in countries where there are no canonically established offices or parishes. Our bishops make their appointments to parishes and the like either verbally or by ordinary letters, but not by formal instruments.

295. Finally, it is necessary for the exercise both of *jurisdictio ordinaria* and *delegata* that the person appointed should at least implicitly accept the appointment.[43]

[37] Phillips, Lehrb., p. 146.
[38] Craiss., n. 382.
[39] Ib., n. 383.
[40] Craiss., n. 385.
[41] Cfr. Soglia, Jus Privat. t. ii., p. 190.
[42] Ib., p. 189.
[43] Craiss., n. 386.

## Art. II.

### *Of Appointments to Ecclesiastical Offices in Particular—Of Election, Postulation, Presentation, and Collation.*

296. In the foregoing paragraph we discoursed on appointments in general; in the present, we shall briefly treat of the various ways in which appointments to offices in the Church are made. Ecclesiastical offices are conferred chiefly in four ways: 1, by election; 2, postulation; 3, presentation; 4, collation.[44] We shall briefly explain each.

### § 1. *Election* (*electio*).

297. By election (*electio*) in a general sense is meant any appointment whatever to ecclesiastical offices, whether it be in the form of postulation, presentation, etc.[45] By election, in a strict sense, we mean a distinctive mode of filling ecclesiastical offices, or of making appointments, which is defined: "Electio est personae idoneae ad vacantem ecclesiam, per eos quibus jus eligendi competit, canonica vocatio, auctoritate superioris confirmanda."[46] At the present day none but the following persons are, properly speaking, elected to offices: the Roman Pontiff, regular prelates, capitular vicars, and bishops in some parts of Germany.[47]

298. Elections may be held in one of these three ways only: 1, *per quasi inspirationem;* 2, *per compromissum;* 3, *per scrutinium.* Let us explain these forms.[48]

299. *First, an election* is held in the form of quasi inspiration (*electio per quasi inspirationem*), when *all* those who are entitled to vote, without even a single[49] exception, and with-

[44] Soglia, vol. ii., p. 165; cfr. Craiss., n. 387.
[45] Reiff., lib. i., tit. vi., n. 3.
[46] Reiff., l. c., n. 4.
[47] Craiss., n. 388.
[48] Cap. Quia propter 42, De Electione, issued by the Fourth Lateran C. in 1215; cfr. Craiss., n. 389.
[49] Phillips, Kirchenr., vol. v., p. 852.

out any special previous arrangement, choose by acclamation, and, so to say, with[60] one heart and mouth, some person to fill an office. We say, "without any previous arrangement" (*nullo praecedente tractatu*); for the electors must, so to say, at the mere mention of the name of the candidate, unanimously proclaim him as their choice for the office; this sort of election, therefore, must be spontaneous, not preconcerted. Any previous arrangement as to the person to be elected, and all influence brought to bear in his favor, are excluded from this mode of election.[61]

300. *Second, an election* takes place in the form of compromise (*electio per compromissum*), "quando capitulares praesentes facultatem eligendi in unum vel plures idoneos viros conferunt, qui vice omnium eligant."[62] The persons thus selected to perform the election (*compromissarii*) need not be[63] members of the chapter; they must, however,[64] be ecclesiastics. The consent of all the vocals or persons entitled to vote is indispensable to an *absolute*, but not to a *limited*, compromise.[65]

301. *Third*, the election by suffrage (*electio per scrutinium*) is that "quae praesentibus omnibus, qui debent, volunt, et possunt interesse, fit per collectionem suffragiorum circa eum in quem major et sanior pars capituli consentit."[66] This form of election, therefore, consists in this, that each of the voters casts his vote separately, either viva voce or secretly—namely, by ballot or ticket.[67] Elections are usually held in this manner[68]—*i.e.*, by ballot.

302. The observance of one or the other of these three forms of election is obligatory only in the election of prelates *pro ecclesiis viduatis*—that is, of bishops[69] and irremov-

[60] Phillips, Kirchenr., vol. v., p. 869. [61] Ib. [62] Reiff., l. c., n. 68. [63] Ib., n. 69. [64] Ib., n. 70. [65] Ib., n. 71–77. [66] Ib., n. 108. [67] Phillips, Kirchenr., vol. v., p. 876; cfr. Bouix, De Capit., p. 185; Devoti, lib. i., tit. v., n. 18. [68] Phillips, Lehrb., p. 200. [69] Reiff., l. c., n. 110.

able abbots;[60] in the election of inferior persons, *v.g.*, of canons, no particular manner of voting is[61] prescribed; all that is necessary is that the canons, when capitularly assembled, cast a majority of votes for the person to be chosen.

303. *Q.* Who are to be invited to take part in the election?

*A.* All those who have the right of suffrage—namely, all those *qui debent, volunt, et possunt commode interesse.* This holds so strictly that if but one of these persons is not invited he may demand the annulment of the election, though he must do so within[62] six months. We said above that all those are to be invited "*qui debent, volunt, et commode possunt interesse.*" We explain.

304.—1. *Qui debent:* by which are excluded those who by law are deprived of the right of suffrage, such as those who are below the age of puberty (*impuberes*), or persons not having the full use of reason,[63] laymen, etc.[64]

305.—2. *Qui volunt:* because no account is to be made of those who do not wish to be present at the election.[65] Hence, in case all who are entitled by law to vote were properly summoned, those who attend, though forming but a small number of the entire body of electors, may yet lawfully perform capitulary acts. In like manner, if, during the election, some electors should leave the place of election and refuse to return, the rest may proceed without them, provided, however, the majority did not go away.[66]

306.—3. *Qui possunt commode interesse:* since those who are at too great a distance need not necessarily be called.[67] *De rigore juris communis*, those only are to be summoned who are within the province.[68] The custom, however, of a place should be observed.[69]

[60] Reiff., l. c., n. 111. [61] Ib., n. 112. [62] Craiss., n. 394.
[63] Ib., n. 395. [64] Ib. [65] Reiffenst., lib. i., tit. vi., n. 117.
[66] Craisson, n. 396. [67] Reiffenst., l. c., n. 118.
[68] Ib., lib. i, tit. vi., n. 118; Craisson, n. 397, 398. [69] Ib., l. c.

307. Voting by proxy is admissible only when the voter is legitimately absent[70] and when this practice is sanctioned by custom or local statute.[71] Again, sick vocals or voters who, though in the city or place where the election is held, are yet unable to assemble in the place of election by reason of infirmity, may cast their vote either by proxy or personally in their residence, when waited upon by those who are deputed to collect the votes.[72] Neither sick nor absent capitulars, however, can send their vote in *writing*, there being an essential difference between the latter and voting by proxy.[73] Some authors, however, assert the contrary.[74] Blank ballots do not count.[75]

308. *Q.* How many electors must be present in order to constitute a valid election?

*A.* Two-thirds are required of those vocals or electors only *qui debent, volunt, et possunt commode interesse.* Hence, in default or non-appearance of the rest, even three, or two, or one capitular may perform the election, making the nomination before a notary and witnesses.[76]

309. *Q.* How many votes are requisite to a valid election or capitulary act?

*A. Ordinarily*, it is not essential that all the electors actually present should consent; but the vote of the *majority* of those who are present is sufficient, provided all those who have a right to be present were canonically called or invited.[77] Thus, if thirteen took part in the election, seven will constitute a majority.[78] We say *ordinarily*, for in certain cases a *majority* vote is insufficient. Thus, in the election of Sovereign Pontiff, the suffrage of two-thirds of the

[70] Ceccoperius, lib. iv., tit. iii.; ap. Bouix, De Capit., pp. 181, 182, edit. 1862. [71] Monacelli, ap. Bouix, De Capit., p. 182. [72] Reiffenst., l. c., n. 192. [73] Ib., n. 194; cfr. Bouix, De Cap., p. 182. [74] Ap. Reiffenst., l. c., n. 196. [75] Reiffenst., l. c., n. 203. [76] Ceccoperius, ap. Bouix, De Capit., p. 166. [77] Bouix, De Capit., pp. 169, 168; cfr. Reiffenst., lib. i., tit. vi., n. 145. [78] Reiffenst., l. c., n. 189.

cardinals present at the election is indispensable.[79] Other exceptions may be seen in Bouix.[80]

310. According to canon law, the vote not only of the *pars major*, but also that of the *pars sanior*, is requisite. It is commonly, however, held that the majority, or the pars major, is also the pars sanior, unless the contrary be proven.[81]

311. *Q.* What else is prescribed relative to elections?

*A.*—1. The election should take place within three months from the day of the vacancy. 2. It must be free. 3. No simony should intervene. 4. The votes, as cast, should be absolute and determinate, not[82] uncertain or conditioned. 5. Once the result is published—*i.e.*, the vote announced (*publicato scrutinio*)—the[83] voters cannot, as a rule, change their vote (*non possunt electores amplius variare*). We say, "*as a rule*"; for there are several exceptions.[84] Among others, a peculiar exception is made in favor of the elections of nuns: when, namely, one of their number is elected, *v.g.*, abbess, by a majority, but not by a two-thirds vote,[85] the nuns composing the minority may go over (*accessus*) to the majority, and thus change their vote, even[86] after the publication of the votes. 6. It is not generally prescribed, though it is advisable, that the votes[87] should be cast *secretly*. We say, "*generally*"; for, in the election of superiors of regulars, and of superioresses[88] of nuns, nay, in the election of all officials whatever of religious of both sexes, the voting must be *secret*, otherwise the election is null, even though but one of the voters should, with the permission of the chapter,[89] make known his vote, *v.g.*, by attempting to vote viva voce, or by telling his vote to another capitular.

[79] Bouix, De Cap., p. 170.
[80] L. c., p. 170.
[81] Reiffenst., l. c., n. 143; cfr. Craisson, n. 404.
[82] Craiss., n. 406.
[83] Cap. Publicato 58, De Elect.
[84] Reiff., lib. i., tit. vi., n. 290–300.
[85] C. Indemnitatibus 43, § Sane, De Elect. in 6.
[86] Reift., l. c., n. 300.
[87] Craiss., n. 409.
[88] Reiff., l. c., n. 328–351.
[89] Ib., n. 345.

The Council of Trent enacted this law in order that no enmities might be occasioned[90] among the religious by elections. Hence, the religious are bound to preserve secrecy as to their vote, even after the election, though a violation of this secrecy, at that time, does not[91] annul the election. 7. Elections cannot take place by lot (*per sortem*), except, perhaps, when the votes are equally divided between two[92] candidates, after the second or third ballot.

312. *Q.* What are the chief things to be done after the election?

*A.*—1. When the election is over, a decree is drawn up and signed by the voters; then all power to change the vote is cut off. 2. The person elected should be notified of his election within eight days, and his consent must be given within[93] a month. 3. A bishop elect must receive consecration within three months from the day on which he was notified of his confirmation. No regular can consent to his election for a prelature out of the monastery without permission from his superior; otherwise the election is, ipso facto, null and void.[94]

§ 2. *Postulation (postulatio).*

313. Chapters who may still have the right (*v.g.*, in some parts of Germany) to elect bishops, may sometimes wish to choose a person as bishop who, though otherwise competent, is nevertheless ineligible by reason of some canonical impediment, *v.g.*, for want of the requisite age,[95] or if he is already a bishop. In this case the canons cannot, strictly speaking, elect such person, but merely request (*postulatio solemnis*, *petitio*, *supplicatio*) the Holy See that he be appointed. This petition (*postulatio solemnis*) must be addressed to the Holy See in a canonical manner. Hence, 1, a majority of the chapter should, generally by vote (*per*

[90] Reiff., l. c., n. 343. [91] Craiss., n. 409. [92] Ib., n. 410. [93] Ib., n. 411.
[94] Craiss., n. 413. [95] Soglia, vol. ii., p. 65

*scrutinium*), concur in[96] the request; 2, only the electors—*i.e.*, those who have the right of suffrage[97]—can vote for the petition to be addressed to the Holy See; 3, the petition must state the impediments[98] affecting the person whose appointment is requested; 4, the impediments themselves must be dispensable.[99] Once the canons have signed the petition and presented it to the Holy See, they are no longer free[100] to change the request or postulation. This kind of postulation (postulatio solemnis) seems to have gone out of use; for, as Devoti[101] says, "hodie generatim omnes, quibus vel aetas, vel quidvis aliud impedimento est, quominus eligi possint, a sede apostolica veniam, sive indultum eligibilitatis impetrare solent."

314. Ecclesiastics of one church or diocese may be elected to some dignity in another church or diocese, with the permission, however, of their superiors (*postulatio simplex*).[102]

§ 3. *Presentation, Nomination* (*praesentatio, nominatio*).

315.—I. Presentation (*praesentatio*) as here taken, is defined: "Personae ad Episcopum vel alium cui competit institutio, per patronum legitime facta exhibitio, ut ei de beneficio vacante provideat."[103] Here the presentation must be distinguished from the appointment. The person whom the *patronus* wishes to have appointed can only be designated or presented by him; the appointment (*collatio non libera, institutio*) itself belongs to the bishop, though it cannot be withheld[104] except for canonical reasons. No *jus patronatus* or right of presentation exists in the United States.

316.—II. Nomination (*nominatio solemnis*) is the act by which two or more worthy persons are proposed to the

[96] Ferraris, V. Postulatio, n. 27. [97] Ib., n. 6. [98] Ib., l. c., n. 9.
[99] Ib., n. 8. [100] Ib., n. 17. [101] Lib. i., tit. v., n. 27.
[102] Ferraris, l. c., n. 16. [103] Reiff., lib. i., tit. vi., n. 18.
[104] Our Notes, p. 121.

superior, in order that he may appoint one of them to the vacant office.[105] When a bishopric falls vacant in the United States, three candidates are proposed to the Holy See by the Consultors and the irremovable Rectors of the vacant diocese and by the bishops of the province. This presentation seems to partake somewhat of the character of nomination.[106]

§ 4. *Collation or Appointment Proper* (*collatio*).

317. Thus far we have used the word appointment (*concessio, collatio*) in a general sense, and applied it to *every* form or mode of conferring ecclesiastical offices. We shall now examine what is meant by the power of appointment in the strict sense of the term.

318. An appointment (*collatio*) proper differs from an election (*electio*) chiefly in these two ways: 1. The appointment confers upon the[107] appointee the office itself (*jus in re*); an election gives but a claim to the office (*jus ad rem*). A person, by being elected, is not thereby appointed, but merely receives the right to be appointed to an office. An election, therefore, may be termed an inchoate and imperfect appointment. The same difference exists between appointments and presentations or nominations. 2. Again, an appointment proper is made by *one* person only; while an election consists essentially of the votes of a *number* of persons.[108]

319. From the above it will be seen that, by an appointment, the full title to the office is vested in the person appointed, who, in fact, becomes, so to say, the owner of the office.[109]

320. Now, an appointment is termed ***collatio libera*** when the collator or appointer not only has the right to appoint

[105] Reiff., l. c., n. 10.
[106] Cfr. Craiss., n. 416.
[107] Reiff., lib. i., tit. vi., n. 25; cfr. Phillips, vol. vii., p. 489, seq.
[108] Devoti, lib. i., tit. v. sect. iii., n. 28
[109] Cfr. Soglia. tom. ii, p. 165.

but also to designate[110] or nominate the person he wishes to appoint; this appointment is named *collatio libera* because the appointer is at liberty to appoint[111] any person he chooses. On the other hand, an appointment is called *collatio non libera, necessaria,* when the appointment itself belongs[112] to one person, and the designation or nomination of the party to be appointed to another. The appointment in this case is termed *collatio necessaria, non libera,* because the appointer cannot refuse to appoint the person designated or presented to him for appointment unless canonical obstacles forbid the appointment.

321. We shall subjoin a few words relative to the mode of appointment of bishops at the present day. It is certain that the appointment—that is, not only the confirmation, but also the election of bishops—is now reserved exclusively[113] to the Roman Pontiff, save in some parts of Germany, where, by virtue of concordats, bishops are still elected by chapters.[114]

322. The manner in which the Holy See now appoints bishops is this:

1. The appointment is made by the Pope, as a rule, in ordinary[115] or secret consistory. We say, *as a rule;* for the bishops of the United States, and of missionary countries in general, are not appointed in consistory, but by papal brief.[116]

323.—2. The appointment itself is preceded by an investigation (*processus informationis, processus inquisitionis*), which is instituted in order to ascertain whether the person to[117] be appointed possesses the necessary qualifications. When the candidate lives in Italy this[118] process of investi-

[110] Reiff., l. c., n. 24.
[111] Phillips, Lehrb., p. 142, § 77.
[112] Ib., § 78, p. 144; cfr. ib., Kirchenr., vol. vii., p. 485.
[113] Bouix, De Episc., vol. i., pp. 205, 206.
[114] Ferraris, V. Episcopus, art. ii., n. 15.
[115] Phillips, vol. vi., § 321, pp. 579, 580.
[116] Ib., § 321, p. 579, and § 330, p. 670; cfr. Bouix, De Episc., vol. i., p. 232.
[117] Phillips, Lehrb., § 154, p. 303.
[118] Soglia, vol. ii., p. 63, § 39.

gation is conducted in Rome; if he resides out of Italy, it is made either by the apostolic nuncio or some other bishop specially commissioned[119] by the Roman Pontiff to that effect. The result of this investigation is then sent to Rome and submitted to a committee of cardinals (congregatio consistorialis). This committee then examines (*processus definitivus*) the report submitted to it, and then decides whether the Pontifical confirmation is to be[120] given or refused.

324.—3. The confirmation, as given by the Pope in consistory, is couched in these words: "Auctoritate Dei omnipotentis, Patris et Filii et Spiritus Sancti, et Beatissimorum Apostolorum Petri et Pauli, ac Nostra, Ecclesiam W. . . . de persona W. . . . providemus ipsumque illi in episcopum praeficimus et pastorem; curam et administrationem ipsius, eidem in spiritualibus et temporalibus plenarie committendo." [121]

325. In the United States the bishops, either in provincial council or special meeting, discuss the qualifications (*processus informationis*) of those whom the consultors and the irremovable rectors have proposed or whom they themselves wish to propose to the Holy See for vacant bishoprics:[122] a statement or report of the acts of the meeting is sent to the Propaganda.[123] The bishops of the United States, and of missionary countries in general, are appointed by the Pope mainly on the recommendation of the Propaganda.[124]

326.—4. After the promotion, in consistory or otherwise, bulls are sent to the bishop elect, to the consecrator, metropolitan, clergy, and people of the[125] appointee.[126] The bishop elect is obliged to make the profession of faith, and to take the oath of obedience and fidelity to the Roman Pontiff; if

[119] Cfr. Bouix, De Episc., vol. 1., p. 215. [120] Phillips, l. c.
[121] Ap. Craiss., n. 420. [122] Conc. Pl. Balt. II., n. 106.
[123] Cfr. our Notes, pp. 95, 99. [124] Phillips, l. c. [125] Craiss., n. 420.
[126] The Propaganda, in appointing bishops for the United States, sends briefs, not to the clergy or people, but merely to the bishop elect, and that through the metropolitan.

out of Rome, he must take this oath in the hands of the consecrator [127] (*y*, p. 520).

327. In regard to this whole matter, Bouix [128] very properly remarks that modern canonists need no longer weary themselves with the study of complex and involved questions as to the election and postulation of bishops, for the simple reason that the Holy See has almost everywhere deprived cathedral chapters and all other parties of the right to elect bishops.

## Art. III.

### *On the Manner of Electing the Sovereign Pontiff.*

328. We ask: What persons have, at various times, exercised the power to elect the Sovereign Pontiff? We reply: 1. At first—*i.e.*, from the time of St. Peter to Pope St. Sylvester I.—the right to elect the Roman Pontiff was vested in the Senate of [129] the Church of the city of Rome. This Senate, which was instituted by St. Peter himself, was composed of twenty-four priests and deacons. 2. After the pontificate of St. Sylvester I. († 335), the entire Roman clergy and people were [130] also admitted to the election of the Pontiff. 3. From the time of Pope Simplicius (ann. 467) to that of Zachary (ann. 741) temporal rulers sought to establish the custom that no Pontiff should be acknowledged as such [131] without their confirmation. 4. Pope Nicholas II. was the first who gave the chief voice in the election of the Roman Pontiff to the cardinals, by ordaining that the election should be held [132] by the cardinal bishops. 5. Finally Pope Alexander III. (ann. 1178) reserved the right of electing the Pontiff exclusively to the cardinals; he also [133] enacted that the Pope could be validly elected by two-thirds of all the cardinals present without any [134] regard

[127] Craiss., n. 421.
[128] De Episc., vol. i., pp. 207, 208.
[129] Ferraris, V. Papa, art. i., n. 13.
[130] Ib., n. 14.
[131] Craiss., n. 422.
[132] Ferraris, l. c., n. 20, 36.
[133] Ib., n. 21, 24, 36.
[134] Craiss., n. 423

to the absent members of the Sacred College. These enactments were confirmed [135] by Gregory X. (1274) and Clement V. (1310), and are in force at the present day.

329. *Q.* Can the Pope elect his successor?

*A.* The Pope is prohibited from electing his successor, not only by ecclesiastical but also by divine and natural law; and such election would be null and void.[136] Hence, the Sovereign Pontiff could not, even with the consent of the cardinals, validly issue a constitution authorizing a Pope to elect or appoint his successor [137] (*infra*, n. 457).

330. *Q.* What should precede the election of the Roman Pontiff?

*A.*—1. Immediately upon the death of a Pope the cardinals are to be convoked; [138] all must be summoned, even those who are absent, excommunicated, suspended, or interdicted; also cardinals but recently created, though not yet invested with the insignia of the cardinalate. 2. The cardinals present must *ordinarily* [139] wait ten days for the arrival of those who are absent. If, however, the cardinals present, for just reasons, proceeded to elect the Pope before the lapse of ten days from the day of the death of the late Pontiff, this election would nevertheless be valid.[140] 3. On the tenth day, or, according to Phillips,[141] on the eleventh, the cardinals enter the conclave in procession. None of the cardinals then in Rome can, except in case of sickness, refuse [142] to enter the conclave; those who arrive later must also be admitted.[143] Once assembled in conclave, they are not at liberty to leave it before the election [144] is over; those who are compelled to go, by reason of sickness or other just cause, do not lose the right [145] to return, as Craisson [146] erroneously asserts.

[135] Ferraris, l. c., n. 22, 36. [136] Ib., V. Papa, art. i., n. 1, 2.
[137] Ib., l. c., n. 12. [138] Craisson, n. 424. [139] Ib., l. c., n. 424.
[140] Ferraris, V. Papa, art. i., n. 24. [141] Lehrb., pp. 205, 206.
[142] Ib., p. 205. [143] Ib. [144] Phillips, Kirchenr., vol. v. p. 860.
[145] Ib., p. 862. [146] N. 424.

4. If, in the course of the election, a considerable number of cardinals should withdraw from the conclave, refusing to participate in the election, the right of electing the Pontiff would devolve on the remaining cardinals, even though but two;[147] nay, even in case but one were left.[148]

331. *Q.* What is the present mode of electing the Sovereign Pontiff?

*A.*—1. The election must be held[149] at present either *per scrutinium*, or *per compromissum*, or *per quasi-inspirationem.*[150] Though any of these three modes can be made use of, the *scrutinium* is the one more usually adopted.[151]

332.—2. The *election per formam scrutini* consists in this that each of the voters casts his vote, as a rule, by ballot;[152] in the election of the Sovereign Pontiff, the cardinals are obliged to vote by sealed ballot.[153] The candidate who receives the votes of two-thirds of all the cardinals present in the conclave[154] is canonically elected Pope. Before the balloting, three cardinals (*scrutatores*) are chosen by lot to count the votes and announce the result.[155]

333.—3. The votes are cast in this manner: Each cardinal writes the name of his candidate on the ballot or ticket of election, formulating[156] his vote thus: "Eligo in summum Pontificem Reverendissimum Dominum meum Dominum Cardinalem N. . . ." This ticket is then folded (*complicatio schedularum*), sealed (*obsignatio schedularum*), and deposited by[157] the voter in a chalice (*positio schedulae in calicem*) placed on an altar for that purpose.

334.—4. The three *scrutatores*, meanwhile,[158] stand by the chalice and superintend the voting. When all the

[147] Ferraris, V. Papa, art. i., n. 40. [148] Ib., n. 41.

[149] Phillips, l. c., p. 852; cfr. ib., Const. Aeterni Patris of Gregory XV. (1621–1623). [150] Ferraris, V. Papa, art. i., n. 55–58.

[151] Phillips, Lehrb., § 107, p. 206. Supra, n. 301.

[152] Phillips, Kirchenr., vol. v., pp. 876, 877. [153] Ib. [154] Ib.

[155] Ib., p. 877. [156] Ib., p. 878. [157] Ib., p. 879. [158] Ib., p. 880.

votes have been cast, the *scrutatores* at once begin to announce the votes (*publicatio scrutinii*) in this manner: the first *scrutator* takes one of the votes out of the chalice, and simply looks at or ascertains the name of the candidate voted for; he then hands the vote or ticket to the second *scrutator*, who likewise, having merely seen the name on it, passes it to the third *scrutator*, by whom the name is audibly announced to the cardinals. All the tickets are thus announced one by one.[159]

335.—5. When all the votes have been counted by the *scrutatores*, and it is found that the ballot is without result, no candidate having received the requisite two-thirds vote, the *accessus* must immediately begin.[160] The *accessus* consists in this, that the cardinals, by balloting as before, go over to one of the candidates who has received at least one vote in the *scrutinium* or first ballot.[161] In the *accessus*, as the word itself indicates, no cardinal can vote for or go over to the one for whom he voted in the *scrutinium*;[162] all, however, are obliged to vote, though they are free to go over to[163] some candidate or to stand by their first choice. A cardinal who goes over to some candidate votes thus: *Accedo N.* . . . A cardinal who does not wish to change his vote ballots thus: *Accedo nemini.*[164]

336.—6. When the *accessus* is over the votes are again counted as before in the scrutinium, and if, even then, it is found that no candidate has received the necessary two-thirds vote, the cardinals must, in their next meeting, unless they prefer to elect the Pope *per compromissum* or *quasi-inspirationem*, proceed to a second[165] ballot or *scrutinium*, and continue thus to ballot twice a day[166]—namely, in the morning and afternoon—until some candidate receives two-thirds of all the votes, and is thus canonically elected

[159] Phillips, l. c., pp. 883, 884.
[160] Ib., p. 886.
[161] Ib., pp. 886, 887
[162] Ib., p. 887.
[163] Ib.
[164] Ib., p. 887.
[165] Ib., p. 888.
[166] Phillips, Lehrb., p. 206.

Pope.[167] The person thus elected, even though not yet in sacred orders, becomes immediately, upon consenting to the election, the Vicar of Christ on earth.[168] The new Pope, as a rule, lays aside his old and assumes a new name.[169]

☞ 337. Finally, Pope Pius IX., of blessed memory, on Dec. 4, 1869, a few days prior to the solemn opening of the Council of the Vatican, issued the constitution *Cum Romanis Pontificibus*, which enacts that the following shall henceforth be the law of the Church [170]: 1. If the Holy See becomes vacant during the holding of an œcumenical council,[171] the election of the new pontiff does not devolve upon the council,[172] but remains wholly and exclusively with the cardinals.[173]

338. 2. Lest any trouble or dissensions should arise, and in order that the cardinals may proceed more freely and promptly with the election, the council itself, in whatever stage it may be at the time, becomes *ipso jure* immediately suspended and prorogued until a new pontiff has been canonically elected and commands its continuance. 3. That not even with the unanimous consent of the cardinals can anything be done contrary to these regulations, and that all such attempts should be null and void.[174] Absent cardinals cannot vote by proxy.[175]

## ART. IV.

### *Appointments to Bishoprics—Mode of Appointment in the United States.*

339. *Q.*—1. By whom and how were bishops appointed at various times?

*A.* The history of appointments to episcopal sees may be divided chiefly into three periods.

[167] Craiss., n. 426. [168] Ib., n. 427. [169] Phillips, Lehrb., p. 207.
[170] Cf. Ferraris, V. Papa, i., n. 45. [171] Cf. Alzog, ed. Pabisch, vol. ii., p. 853.
[172] Ferr., l. c. [173] Const. Rom. Pontif. Pii IX., 1869, § *Opportunum*.
[174] Ib., § Praesentes autem. [175] Devoti, lib. i., tit. 5, Sect. i., § 3.

I. *First period.*—Christ himself[176] first chose his apostles. The apostles in turn appointed their successors, the bishops.[177] The clergy and people not unfrequently took part in the appointment of bishops, as made by the apostles.[178] Afterwards, appointments to bishoprics were, as a rule, made conjointly by the metropolitan, the bishops of the province, the clergy, and the people of the vacant[179] diocese. The elections seem to have been held usually in provincial synods. According to some canonists,[180] the people merely gave testimony of the character of the candidates; according to others, they actually exercised the elective franchise. It is certain that the laity are not jure divino possessed of the right of electing bishops.[181] In some instances, especially where it was feared that these elections might give rise to dissensions, the metropolitan sent some bishop (*episcopus visitator*) to superintend the election.[182]

340. Bouix[183] thus describes the mode of election of this period: *First*, the suffrage of the people or laity was necessary; *second*, that of the clergy of the vacant diocese was also required; *third*, the consent of the bishops of the province was, moreover, indispensable to the valid election of a bishop.

341. Bishops, however, were not unfrequently appointed, even during this epoch, directly by the Holy See; especially is this true in regard to the West, where for the first four centuries bishops were directly and solely appointed by the Holy See.[184]

342. II. *Second period.*—In the twelfth century the right

176 Luc, vi. 13.
177 Tarquini, Jur. Eccl. Publ. Inst., p. 121.
178 Phillips, Lehrb., p. 294, § 150.
179 Craiss., n. 429.
180 See Ferraris, V. Episcopus, art. ii., n. 1, 2.
181 Tarqu., l. c., p. 119–130.
182 Devoti, lib. i., tit. v., sect. i., n. 8.
183 De Episcopo, vol. i., p. 179, edit. 1873.
184 Phillips, Lehrb., § 98, pp. 185, 186; cfr. Devoti, l. c., n. 5.

of electing bishops became vested solely and exclusively in cathedral chapters.[185]

343. III. *Third period.*—Owing to abuses consequent on elections by chapters, the Sovereign Pontiffs began, in the fourteenth century, to reserve to themselves the appointment of bishops. Clement V. took the first step in this matter by reserving the appointment to *some* bishoprics; John XXII. increased the number, and Pope Benedict XII. (1334) finally reserved to the Holy See the appointment (*i.e.*, the election and confirmation) of all the bishops of the Catholic world.[186] Elections by chapters were consequently discontinued everywhere. Afterwards, however, the right of election was restored to cathedral chapters in some[187] parts of Germany, so that[188] in these parts only bishops and archbishops are still, as of old, canonically elected by[189] their cathedral chapters.

344. *Q.* Were the Roman Pontiffs guilty of usurpation in reserving to themselves the appointment of bishops?

*A.* By no means; for the Pope alone is, by virtue of his primacy, vested with *potestas ordinaria*, not only to confirm, but also to elect, bishops.[190] Hence it was only by the consent, express or tacit, of the Popes that others ever did or could validly elect bishops.[191]

345. *Q.* How are bishops appointed in the United States according to the Third Plenary Council of Baltimore?

*A.* Prior to the *Third Plenary Council of Baltimore*, held in 1884, the candidates for a vacant diocese were presented to the S. C. de Prop. Fide by the bishops of the province to which the vacant diocese belonged.[192] The priests of the

[185] Ferraris, V. Episcopus, art. ii., n. 5; cfr. Tarqu., l. c., p. 123.

[186] Phillips, l. c., p. 186.

[187] Ib., p. 187.

[188] Ib., Kirchenr., vol. v., p. 401 seq.

[189] Ferraris, V. Episcopus, art. ii., n. 6–10.

[190] Devoti, l. c., n. 5, 10.

[191] Bouix, De Episc., vol. i., pp. 184, 194; cfr. Conc. Trid., sess. xxiii., can. 8; sess. xxiv., cap. i., De Ref.

[192] Conc. Pl. Balt. II., n. 103 sq.

vacant diocese had no share or voice in this presentation or nomination. The *Third Plenary Council of Baltimore* amended this mode of appointment and made the following enactments, which now form the law in this country:[193]

346. I. When a diocese falls vacant, whether by the death, resignation, transfer, or removal of the bishop, and when, in consequence, three candidates are to be chosen whose names shall be proposed or recommended to the Holy See for the vacant bishopric, the consultors and the irremovable rectors of the vacant diocese shall be called together, *v.g.*, thirty days after the vacancy occurs. It will be the right and duty of these consultors and rectors, thus properly assembled, to select three candidates for the vacant see. The candidates thus chosen shall be submitted to the bishops of the province, whose right it will be to approve or disapprove of them.

II. The meeting of the consultors and irremovable rectors is called and presided over by the metropolitan of the province to which the vacant diocese belongs; or, if the metropolitan is lawfully hindered, by one of the suffragan bishops of the same province, to be deputed for this purpose by the metropolitan. Where there is question of choosing three candidates for a metropolitan see which is vacant, the meeting of the consultors and irremovable rectors of the vacant metropolitan see is called and presided over by the senior suffragan bishop,[194] or, if he is hindered, by another bishop to be deputed by him.

III. Before they cast their votes, the aforesaid consultors and rectors shall swear that they are not induced to cast their votes for a candidate because of unworthy motives, such as that of expecting favors or rewards. They shall vote by *secret ballot*. This vote is merely consultive, *i.e.*, it is simply equivalent to a recommendation that one of the candidates be appointed to the vacant see.

[193] Conc. Pl. Balt. III., n. 15, 16.

[194] That is, by the suffragan who is the oldest *ratione ordinationis*.

IV. The president of the meeting shall cause two authentic copies of the minutes of the meeting containing an accurate list of the candidates chosen, to be drawn up and signed by the secretary. He shall forward one copy directly to the S. C. de Prop. Fide; the second to the other bishops of the province. A third copy may also be drawn up and kept in the diocesan archives, as is done in England. For the manner in which these minutes are written, see the extract from the statutes of the cathedral chapters in England, given by us below, in Appendix VII.

V. Thereupon, on a day fixed beforehand, *v.g.*, ten days after the above meeting of consultors and rectors, the bishops of the province shall meet and openly discuss among themselves the merits of the candidates selected by the consultors and rectors, or of others to be selected by themselves. Then they vote by secret ballot, and make up the list to be sent to Rome.[196] From this it will be seen that the bishops have a right to approve or disapprove of the candidates chosen by the clergy. But if they disapprove of them, they are bound to give the reasons upon which they base their disapproval to the S. C. de P. F.

VI. In everything else the bishops shall observe the instruction of the S. C. de P. F. dated Jan. 21, 1861, and given in the Second Plenary Council of Baltimore, n. 106, 107. In other words, the bishops shall state in writing the qualifications and merits of the various candidates, according to the questions given in the Second Plenary Council of Baltimore, n. 107. The minutes of the meeting of the bishops shall then be sent to the S. C. de P. F. by the archbishop, or senior bishop of the province.

347. VII. When there is question of appointing a *coadjutor-bishop* "cum jure successionis," the rules laid down above under Nos. I., III., IV., V., and VI. shall be strictly adhered to. Rule II. will, however, be changed thus: The meeting of

[196] Instr. S. C. de P. F., Jan. 21, 1861, § v.

the consultors and irremovable rectors will be presided over, not by the archbishop of the province, or his deputy, but by the archbishop or bishop *for whom the coadjutor is to be chosen*, or where he is hindered, by the vicar-general, or other priest, deputed by him. Moreover, in this case, the bishop for whom the coadjutor is to be named can, if he desires, suggest or point out the names of the candidates who would be most acceptable to him for the coadjutorship.

348. VIII. When there is question of electing a bishop for a diocese *newly erected*, the rules given above under Nos. II., III., IV., V., and VI. shall be observed. However, Rule I. shall be changed thus: When there is question of proposing to the Holy See the names of candidates for the new diocese, *the consultors of the diocese, or dioceses, from which the new see has been formed*, and the irremovable rectors of the newly-erected diocese, shall be called together, and it will be their right and duty to select three candidates for the new bishopric. This rule is based on the fact that a newly-erected see will, of course, have no consultors until after the first bishop, having been confirmed, appoints them. Hence the consultors of the old diocese or dioceses properly take the place of the future consultors of the new diocese, for the purpose of naming the first bishop.

☞ 349. As to the manner of holding the above meetings of the consultors and irremovable rectors, and of voting for the three candidates to be presented to the Holy See, we refer the reader to the instruction of the S. C. de P. F. dated April 21, 1852, for England; also to the Statutes of Cathedral Chapters in England, approved by the First Provincial Council of Westminster, held July 7, 1852; and to the decree of the S. C. de P. F. dated June 1, 1829, regulating the mode of procedure in electing bishops in Ireland. The rules and mode of procedure laid down in these documents, which we give below in Appendix VIII., are evidently well adapted to our mode of commendation.

☞ It is very important to have these meetings conducted in such a manner that the voters shall have full opportunity to cast their votes with perfect freedom and without fear or undue influence. To secure liberty of action, the general law of the Church has laid down clear and precise regulations, which must be observed in ecclesiastical elections, especially to vacant bishoprics (supra, n. 301 sq. and 331 sq.). Although the commendation as made in the United States, Ireland, and England is not an election proper, it nevertheless takes the place of an election. Hence the Holy See has carefully laid down, in accordance with the general law of the Church, the manner in which the meetings of the clergy in Ireland and England are to be held for the purpose of making the commendation, as we shall presently see. So far as concerns the United States, the mode of procedure to be observed in the above meetings of the consultors and rectors has not been determined by the Holy See or the *Third Plenary Council of Baltimore*, save in a very general way.

Finally, it should be observed that the above presentation of candidates to the Holy See, both as made, on the one hand, by the consultors and irremovable rectors, and on the other by the bishops of the province, is to be considered, not as *electio*, *postulatio*, or *nominatio*,[196] but merely as *commendatio*, which imposes upon the Holy See no obligation to appoint any of the persons recommended.[197] The same holds true of the presentation as made in Ireland, England, Canada, and Holland.[198]

☞ As a matter of fact, however, the Holy See nearly always appoints one of the candidates—usually the one who is *first* on the list—recommended or presented in the manner above stated, and rarely goes outside of the list of the candidates presented or recommended to it for appointment.

[196] Instr. S. C. de P. F., 18 Martii, 1834, Quod pertinet.

[197] Conc. Pl. Balt. II., n. 103.

[198] Coll. Lac., vol. iii., p. 959.

☞ Q. 350. How are bishops appointed or rather designated in Canada, Ireland, and England?

*A.* I. *In Canada* the method of recommending to the Holy See candidates to fill vacant bishoprics is substantially the same as that which obtained in the United States prior to the *Third Plenary Council of Baltimore*, held in 1884. The presentation is made solely by the *bishops of the province*.[205] The priests have no voice in it.

☞ 351. II. *In Ireland* this mode obtains: Three priests are proposed to the Holy See by the *parish priests* and *canons*, if any, of the vacant diocese, properly convened for that purpose. The meeting is called and presided over by the archbishop, who, however, has no vote. The manner in which the meeting is to be held and the balloting take place is clearly and minutely set forth in the decree of the S. C. de P. F. dated Oct. 17, 1829, and given by us below in Appendix VII. It is substantially this: 1. When a see falls vacant the vicar-capitular is elected by the cathedral chapter of the vacant diocese, in the manner prescribed by the sacred canons, within eight days after the vacancy. 2. The metropolitan of the province, as soon as he has been notified of the vacancy and the election of the vicar-capitular, issues a mandate to the latter commanding him to convene the parish priests and canons on the twentieth day from the date of the mandate. 3. As soon as the vicar-capitular has received this mandate he writes within eight days to each of the above priests entitled to vote, summoning him to attend the meeting on the day and at the place designated by the archbishop.

4. The parish priests and canons, being assembled at the time and place specified, solemn high mass "de spiritu sancto" is celebrated. After the mass the president ascends

[205] Conc. Prov. Quebec III., a. 1863, Decr. v.; cf. Coll. Lac., vol. iii., pp. 671, 684, 686, 688.

a throne or platform in the middle of the church. Those who have no right to vote are then requested to leave, and the doors of the church are locked. Next the roll of the voters is called. Two tellers or *scrutatores* are then elected by the voters present. Whereupon the voters all simultaneously affirm before God that they will be influenced by no unworthy motives in their vote. Then each voter in turn casts his ballot into the ballot-box and returns to his seat. The three candidates are voted for in one ballot. Consequently each voter must put on the ticket which contains his vote the names of all the three candidates for whom he wishes to vote, thus:

1. Rev. ———, *dignissimus.*
2. Rev. ———, *dignior.*
3. Rev. ———, *dignus.*

5. When all have cast their votes, the votes shall be counted by the tellers, and the names of the three candidates who have obtained a majority of votes shall *be announced in a loud, clear voice* by the two tellers to the archbishop or president, and by him to the voters present. 6. Afterwards the president orders an authentic record of the proceedings to be drawn up in writing in the presence of the meeting. Two copies of these minutes are then made out and signed by himself, by the secretary, and the two tellers. One copy is given to the vicar-capitular and transmitted by him to the Holy See; the other to the president, and submitted by him to the other bishops of the province.

7. Thereupon the bishops of the province hold their meeting and discuss the merits of the candidates chosen by the clergy. Their opinion is put in writing and signed by each, and then sent to the S. C. de Prop. Fide. They cannot, even in case they disapprove of the list presented by the clergy, make out a list of their own.[206]

[206] Syn. Pl. apud Mayn., pp. 273-279.

☞ III. *In England* this method is observed: When a diocese becomes vacant three candidates are presented or rather recommended to the Holy See by the *cathedral chapter* of the vacant see.[207] The rectors of missions, even those who are irremovable, have no voice in this presentation. The meeting of the canons, to be held for the purpose of selecting the three candidates, must be held *within a month* from the death of the bishop. It is called and presided over by the metropolitan; or if he is hindered from being present, as also when the archiepiscopal see itself is to be filled, by the senior suffragan bishop. Neither the archbishop nor the senior suffragan can take part in the voting.[208] The manner in which the meeting is to be conducted and the ballots cast is accurately laid down in the instruction of the S. C. de P. F., April 21, 1852, and in the "Statutes of the Cathedral Chapters in England," which we give below in Appendix VIII. Its main features are as follows:[209]

1. When a see falls vacant the vicar-capitular is elected by the cathedral chapter within eight days after the vacancy.
2. The canons then assemble at the time and place specified by the archbishop, as stated. When they are assembled, solemn high mass "de spiritu sancto" is celebrated by one of the canons. Next the canons swear that they will keep the proceedings secret. Then they elect three tellers or *scrutatores* to receive, count, and announce the vote. Thereupon, without any previous discussion on the merits of the candidates, they proceed to vote. The voting is by secret ballot. Separate ballots or tickets are cast for each of the three candidates.

3. In the first ballot the canons will vote for the candidate whom they regard as the most worthy (*dignissimus*) for the

[207] Instr. S. C. de P. F., Apr. 21, 1852.

[208] Conc. Prov. Westmon. I., a. 1852, Decr. xii.

[209] See Coll. Lac., vol. iii., pp. 924, 925, 950, 959, 1433.

vacant see. Each canon writes the name of his candidate on one side of a slip of paper and his own name on the other; he then folds and seals it in such a manner that his own name will be on the inside and that of his candidate on the outside of the paper. When all the canons have given their vote, the tellers count the vote and announce to the meeting the names of the candidates voted for. Afterwards the ballots are burned. 4. If it is found that no candidate has received a majority of the votes, both of those present and of those lawfully absent, but represented by procurators, the balloting must be continued until one of the candidates obtains the requisite majority. 5. Next the candidates will successively vote, on separate tickets, for the second candidate, who is to be *dignior*, and for the third who is to be *dignus*, and that in the same manner as in the case of the first candidate who is to be *dignissimus*. 6. After the balloting is over, the minutes of the meeting are drawn up, read to, and approved by the canons, and then signed by the Very Rev. the provost of the chapter, the secretary, and the three tellers. Three authentic copies of these minutes are made out: one to be kept in the archives of the chapter; the second to be submitted by the archbishop to the bishops of the province; the third to be sent directly to the S. C. de Prop. Fide by the archbishop.

7. As soon as possible after the above meeting of the canons the bishops of the province assemble and discuss the merits of the candidates chosen by the canons. Their views are put in writing and sent to Rome. *Note.*—The bishops of the province can merely discuss the names chosen by the canons, and send their opinion on each candidate to Rome. But they cannot propose a new list of their own."[310] The mode of commendation in Holland is substantially the same as in England.

[310] Cf. Coll. Lac., vol. iii., pp. 950, 958.

☞ *Differences between the Commendation in the United States on the one hand, and that in Ireland and England on the other.*—1. In Ireland and England the list of the candidates chosen by the clergy must be submitted to the bishops of the province, as in the United States. Consequently it is the right and duty of the bishops in Ireland and England to meet and discuss the merits of the names selected by the clergy, just as in this country. But they cannot, in case they disapprove of the nominees of the clergy, present a list of their own, whereas our bishops have a right to make a list of their own. 2. Again, in Ireland, besides the canons, all who are called parish priests—and by parish priests are meant *all priests whatever* who have charge of congregations as pastors—have a vote. In the United States, besides the consultors, only those rectors have a vote who are irremovable. 3. In England the canons only have a vote. The rectors, even those who are irremovable, have none 4. In England each candidate is balloted for on a separate ticket; while in Ireland the names of the three candidates are voted for on the same ticket or ballot.

## Art. V.

### *Of Appointments to Non-Prelatical Offices, especially to Parishes —Appointments to Parishes in the United States.*

355. Benefices or ecclesiastical offices are distinguished, 1, into *major* (*beneficia majora*), *v.g.*, the papacy, the cardinalate, the episcopal office, prelatures, and abbotships with *jurisdictio quasi episcopalis;* 2, into *minor* (*beneficia minora*), *v.g.*, the office of a parish priest, canon, and the like.[211] In the foregoing pages we considered the mode of appointment to the higher offices (*beneficia majora*) in the Church; in the

[211] Salzano, vol. iii., p. 229.

present we shall briefly discuss the mode of appointment to the lower ecclesiastical offices, especially parishes.

356. According to the *jus commune* of the Church, the power of appointment to these offices is vested in the Sovereign Pontiff *jure plenario;* in bishops, *jure ordinario;* and in others, *jure delegato.*[212]

357.—I. *Power of appointment, as vested in the Roman Pontiff.*—The Pope has full and supreme power (*jus plenum, jus summum, potestas absoluta et plenaria*) to fill all ecclesiastical offices or benefices[213] throughout the Catholic world; for he is the *episcopus universalis,*[214] the *ordinarius ordinariorum*[215] *et totius orbis,* and has *potestas plena gubernandi universalem Ecclesiam.*[216]

358. The Sovereign Pontiff may exercise this power of appointment in various ways—namely, 1, *jure concursus,*[217] inasmuch as he has concurrent power with inferior appointers; 2, *jure devolutionis,* when, for instance, bishops neglect to confer or fill benefices within the time fixed[218] by law; 3, *jure praeventionis*—namely, when the Pope enjoins that offices which are not as yet vacant[219] shall, upon becoming vacant, be given to a certain person: the[220] *jus praeventionis* can be exercised by[221] the Pope only; 4, *jure reservationis,* when the Pope reserves to himself the sole power of appointment[222] to certain benefices.

359. The Holy See no longer makes appointments *jure concursus* or[223] *praeventionis;* but it still *reserves* to itself the

[212] Soglia, vol. ii., p. 166; cfr. Ferraris, V. Beneficium, art. iv., addit. ex aliena manu, n. 1.
[213] Phillips, vol. v., p. 470.
[214] Cfr. Leuren. For. Benef., part ii., quaest. 512 and 513.
[215] Ferraris, V. Benef., art. iv., n. 1.
[216] Cfr. Conc. Vat, sess iv., cap. iii.
[217] Reiff., lib. iii., tit. v, n. 154.
[218] Bouix, De Paroch., p. 309, edit. 1867.
[219] Reiff., l. c., n. 152.
[220] Ib., n. 153.
[221] Cfr. Conc. Trid., sess. xxiv., cap. xix., d. R.
[222] Leuren., l. c., quaest. 513.
[223] Bouix, De Paroch., p. 309; cfr. Salzano, vol. iii., p. 245.

appointment to some of the offices.[224] Now, what appointments are at present chiefly reserved to the Holy See? Some of them are contained in[225] the *corpus juris* (*reservationes in corpore juris clausae*); thus the appointment to all benefices[226] falling vacant *apud sedem apostolicam* or *in curia Romana*, is reserved to the Pope. A benefice is said to become[227] vacant *in curia* when its incumbent dies either in Rome or within forty Italian miles[228] of it. It is a disputed question whether the appointment to canonical parishes becoming thus vacant is reserved to the Pope. The affirmative is held by Bouix,[229] the negative by Soglia.[230] It is certain, however, that parishes presided over by rectors *amovibiles ad nutum*[231] are not included in the above reservation. Other appointments, still reserved to the Holy See, are *extra corpus*[232] *juris*. Thus, for instance, if an appointment to a canonical parish is made by the bishop, *non servata forma concursus*, the right of appointment in the case is forfeited by him and devolves on the Pope. The same holds true of all appointments to benefices made[233] contrary to the prescriptions of the Council of Trent.

360.—II. *Right of appointment as vested in the bishop of the diocese.*—The bishop is, according to the *jus commune*,[234] vested with the full and free[235] right of appointment (*collatio libera*) to all vacant parishes or benefices[236] in his diocese.

361.—III. *Cardinals* are generally possessed *jure delegato* of ample powers of making appointments to benefices.[237]

[224] Soglia, vol. ii., p. 168.
[225] Salzano, vol. iii., p. 245.
[226] Bouix, l. c., pp. 313, 314, 315.
[227] Phillips, vol. v., p. 517.
[228] Soglia, l. c., p. 169.
[229] L. c., p. 315.
[230] L. c., p. 169.
[231] Craiss., n. 445.
[232] Salzano, vol. iii., p. 245.
[233] Bouix, De Paroch., p. 317.
[234] Ib., p. 323.
[235] Phillips, Lehrb., p. 261.
[236] Devoti, lib. i., tit. v., n. 29; cfr. Ferraris, l. c., n. 30–34.
[237] Soglia, l. c., p. 181.

Where chapters are canonically established, the appointment of the canons of cathedral chapters belongs, as a rule, conjointly (*jus collationis simultaneae*) to the bishop and to the chapter.[238] Canons of collegiate chapters are elected by the chapters and instituted[239] by the bishop.

362.—IV. *Power of appointment, as vested in the bishops of the United States.*—Thus far we have spoken of the right of appointment as determined by the *jus commune*. We now examine the question in relation to the present exceptional status of the Church in the United States. We ask: To whom belongs the power of appointment to parishes in the United States? To our bishops solely and exclusively.[240] No appointments whatever are reserved to the Sovereign Pontiff, since, with us, there are no canonical parishes or benefices. For where the *jus commune*, whether *in corpore* or *extra corpus juris*, reserves appointments to the Holy See, it does so only in regard to canonical parishes or offices. However, according to the *Third Plenary Council of Baltimore*, the parochial *concursus* is now obligatory with us, in appointments to parishes or missions whose rectors are *irremovable*. Consequently, where the bishop appoints an irremovable rector without the *concursus*, the appointment will be null and void, and devolve upon the Holy See. In the appointment of removable rectors our bishops are not obliged to have a *concursus*, but are free to appoint the person whom, in their conscientious discretion, they consider *dignior*.[241]

363. Exempted nuns (or, rather, their regular superiors) have[242] the right to nominate their chaplain. As there are no exempted nuns in the United States, the chaplains of convents are all appointed by the bishop. We sum up: As there exists no canonical *jus patronatus* in this country, the *collatio libera*—*i.e.*, not only the appointment, but also the

[238] Bouix, De Capit., pp. 201, 202, 207, edit. 1862. [239] Ib., p. 243.
[240] Conc. Prov. Balt. I., n. 1, 2; cfr. Conc. Pl. Balt. II., n. 112, 123, 124, 125.
[241] Conc. Pl. Balt. II., n. 126. [242] Ib., n. 460.

designation, of the person to be appointed—is in all cases vested in the bishop. The Ordinary, therefore, with us, designates and appoints all pastors, professors, chaplains, etc.

364.—V. *When appointments are to be made.*—Appointments to parishes and to all *beneficia minora* must be made within six months [243] from the day on which information was received of their vacancy. The appointment, if not made by the [244] bishop within the above time, devolves on the chapter, and, in its default, on the metropolitan. On the other hand, bishops or other persons having [245] the right to make appointments cannot promise to confer a parish or benefice before it actually becomes vacant. The Pope alone can confer, or promise to confer, benefices not yet vacant.[246] Appointments to parishes or other benefices,[247] when made by bishops, need not [248] be in writing.

## Art. VI.

### *Installation (Institutio Corporalis).*

365. Installation (*institutio corporalis, institutio realis, investitura*) is the induction into the actual possession of a [249] parish or benefice. Every appointment (*provisio*) includes three things: 1, the selection of the person to be appointed (*designatio personae*); 2, the appointment proper (*institutio canonica, collatio*); 3, the installation (*installatio, institutio corporalis*) or taking possession of the parish.[250] Now, an ecclesiastic, though appointed to a parish or benefice, cannot take actual possession [251] of it himself, but must be in-

[243] Phillips, Kirchenr., vol. vii., pp. 540, 541.
[244] Cfr. Soglia, vol. ii., § 95, p. 190.
[245] Ib., p. 191.
[246] Cfr. Phillips, l. c., pp. 525–536.
[247] Bouix, De Paroch., p. 306.
[248] Craiss., n. 383.
[249] Reiff., lib. iii., tit. vii., n. 8.
[250] Gerlach, Lehrb., p. 252; cfr. ib., pp. 273, 274.
[251] Phillips, l. c., pp. 508, 509.

stalled by the bishop or other person deputed by him. The bishop generally selects some priest (*e.g.*, the vicar-general or rural dean) to discharge this duty.

366.—*Q.* What is the custom in the United States relative to the installation of pastors?

*A.* As a rule, no installation whatever takes place. Clergymen appointed to parishes take charge of them without any ceremonies of induction. Nor is installation, strictly speaking, requisite, since with us there are no parish priests, in the canonical sense of the term.

***How and by whom appointments are made to the chief civil offices in the United States.***—I. *Federal offices.* 1. The President and Vice-President are chosen not directly by the people at large, but by electors chosen for that express purpose. 2. Federal senators and representatives: the former are usually elected by joint ballot of both Houses of the Assembly of their respective State, and not directly by the people; the latter directly by the people, voting by districts. 3. The President is empowered to nominate and, by and with the advice and consent of the Senate, to appoint the supreme and district judges of the United States, the members of his cabinet, ambassadors, and other public ministers and consuls, etc. Other inferior officers are appointed by the President alone, or by the heads of departments. II. *State offices.* The governor and lieutenant-governor are generally elected directly by the people. A plurality only is required for a choice. The other State officers, as distinguished from county and township officers, are a secretary, treasurer, auditor, and attorney-general; they are usually elected by the people for a certain number of years.[193]

[193] Walker, pp. 96, 100, 109, 110. Boston, 1874.

# CHAPTER VIII.

## OF THE QUALIFICATIONS REQUIRED IN PERSONS WHO ARE TO BE PROMOTED OR APPOINTED TO ECCLESIASTICAL DIGNITIES AND OFFICES (DE QUALITATIBUS, ETC.).

### ART. I.

### *Of the Requisite Qualifications in General.*

367. Three qualifications are chiefly[1] required in persons to be appointed to ecclesiastical offices,[2] especially to the episcopal, to wit: The requisite age, purity of morals, and learning.[3]

368.—I. *Requisite age* (*aetatis maturitas*).—The law of the Church prescribes[4] that persons to be promoted to the episcopal dignity should have completed the thirtieth year of their age; those who are to be appointed to parishes should be twenty-four years old.[5] Persons who are to be appointed to these or other ecclesiastical offices before they have attained the proper age must in all cases[6] obtain a dispensation from the Holy See, otherwise the appointment is null and void, even though but an hour be wanting to the requisite age.[7] What has been said thus far does not, so far as appointments to parishes are concerned, apply to the United States, since our parishes are not, properly speaking, benefices. Hence, a priest in this country, if ordained at the age

[1] Phillips, vol. vii., pp. 545, 546. [2] Cap. Cum in Cunctis 7, § 1, de Elect.
[3] Conc. Trid., sess. vii., cap. i., de Ref.
[4] Cfr. Ferraris, V. Beneficium, art. v., n. 7, 8. [5] Devoti, tit. vi., n. 6.
[6] Phillips, Lehrb., p. 149. [7] Bouix, de Capit., p. 145 1862.

of twenty-three, may also be appointed to a parish at that age.[8] No precise age is prescribed for the Papal dignity. It is, however, but proper that persons who are to be elected Popes should be at least thirty years old.[9]

369.—II. *Purity of morals* (*gravitas morum*).—The appointment of persons who are, 1, guilty of crimes, especially of luxuriousness, drunkenness,[10] and the like; 2, or who are *irregulares*, or under grave censure—*v.g.*, suspension or major excommunication[11]—is, *ipso jure*, invalid.[12]

370.—III. *Learning* (*litterarum scientia*).—A person may possess learning in a threefold degree: 1, in an *eminent degree*, when, without the aid of books, he can readily[13] explain even difficult questions; 2, in a *middling degree*, if, with the aid of books and upon deliberation, he is able to clear[14] up difficult questions; 3, finally, in a *sufficient degree*—*i.e.*, in a manner that enables him to discharge the duties of his office.[15] Now, it is a general principle that those persons only are appointable to ecclesiastical offices who have sufficient knowledge[16] to enable them to properly discharge the duties of the respective office. Hence, the particular degree of learning which is required in appointees varies according to the office to which they are appointed. Thus, in bishops, an eminent[17] degree of learning (*scientia eminens*) is very desirable, though a mediocre (*scientia mediocris*), nay, even a[18] sufficient degree (*scientia sufficiens*), may be tolerated. In order to insure a proper degree of learning in certain officials, the Church requires that, where it is possible, bishops, archdeacons, capitular vicars, vicars-general, professors of theology, and the like, should be licentiates or doctors either

[8] Cfr. Craiss., n. 467.
[9] Phillips, Lehrb., p. 148.
[10] Craiss., n. 469.
[11] Reiff., lib. i., tit. vi., n. 221.
[12] Phillips, l. c., p. 149.
[13] Reiff., l. c., n. 205.
[14] Ib.
[15] Cfr. Ferraris, V. Beneficium, art. v., n. 11, 12.
[16] Reiff., l. c., n. 206.
[17] Ib., n. 207.
[18] Cfr. Conc. Trid., sess. xxii., cap. ii., d. R.

in theology or canon law.[19] Parish priests and others charged with the *cura animarum* must be endowed with at least *scientia sufficiens.*[20] The Scripture says: "Quia tu scientiam repulisti, repellam te, ne sacerdotio fungaris mihi."[21]

371. To the above three qualifications two others are[22] added: 1. That the person to be appointed to any ecclesiastical office whatever should be born of lawful marriage (*thorus legitimus, natales legitimi*); those who are begotten out of lawful matrimony—*v.g.*, of concubinage—cannot receive any of the *ordines majores* or be appointed to any office to which the *cura animarum* is annexed, except upon receiving the necessary dispensation from the Holy See, or upon being legitimized by subsequent marriage.[23] Bishops, moreover, should be born of Catholic parents.[24] 2. Only ecclesiastics—that is, those who have at least the clerical tonsure and are therefore in *statu clericali*—can fill ecclesiastical offices. Laymen, therefore, are not[25] appointable. In most cases, moreover, the appointee should be in sacred orders.[26] In some parts of Europe—*v.g.*, in Austria, Bavaria, etc.—the person to be appointed—*v.g.*, to a parish and the like—should be, as far as practicable,[27] one that is acceptable (*persona grata*) to the civil government.

## Art. II.

### *Is it Necessary to Appoint a Persona Dignior in Preference to a Persona Digna?*

372. *Q.* What is meant by *persona indigna, digna,* and *dignior?*

*A.* 1. By *persona indigna* we mean one who is desti-

[19] Phillips, Lehrb., p. 149. [20] Reiff., l. c., n. 208. [21] Osee iv. 6.
[22] Craiss., n. 466. [23] Soglia, vol. ii., § 94, pp. 185, 186.
[24] Const. Onus Apost. Greg. XIV., 1590. [25] Soglia, l. c., pp. 184, 185.
[26] Phillips, Lehrb., p. 150. [27] Ib., Kirchenr., vol. vii., pp. 559, 560.

tute[28] of at least one of the qualifications above mentioned. 2. *Persona digna* is one who has in a[29] sufficient degree all the requisite capacities for the office. 3. The *persona dignior*[30] is one who possesses the requisite qualifications in a more perfect manner than the *persona digna*, and who therefore is better fitted for the office.[31]

373. *Q.* Is it allowed to appoint a *persona digna* in preference to a *persona dignior?*

*A.* For bishoprics[32] and parishes it is necessary to select the *persona dignior*[33] in preference to the *persona digna*, and those who promote persons worthy indeed, yet less worthy than others, are guilty of mortal sin.[34]

374. *Q.* How far is this applicable to the United States?

*A.*—I. *Appointments to Episcopal Sees.*—1. Bishops in the United States are undoubtedly obliged, under pain of mortal sin, to recommend or propose to the Holy See, as candidates for bishoprics, not merely those who are worthy and competent (*digni*), but those who are the most worthy (*digniores*).[35] 2. This applies not only to bishops, but also to the consultors and irremovable rectors who, according to the present discipline, inaugurated by the *Third Plenary Council of Baltimore*, as explained above, n. 345 sq., have the right and duty to recommend to the Holy See three candidates for a vacant diocese. 3. Nay, this holds true even with regard to laics, male or female, who in any way have a part in the appointment of bishops.[36] The Council of Trent[37] clearly

[28] Craiss., n. 475.
[29] Reiff., lib. i., tit. vi., n. 235, 236.
[30] Ferraris, V. Beneficium, art. v., n. 40, 42.
[31] Phillips, Lehrb., p. 152.
[32] Reiff., l. c., n. 238–246.
[33] Phillips, Kirchenr., vol. vii., p. 566; cfr. Ferraris, l. c., n. 17–27.
[34] St. Liguor., lib. iv., n. 91, 92; cfr. Conc. Trid., sess. xxiv., cap. i., d. R., and ib., cap. xviii.
[35] Cfr. Bouix, De Episcopo, vol. i., p. 312, 1873.
[36] Cfr. Bouix, l. c., pp. 312, 313.
[37] Sess. xxiv., cap. i., d. R.; cfr. Conc. Pl. Balt. II., n. 101, 107.

conveys this inference: "And as regards *all* and *each* of those who have, *in any way*, any right from the Apostolic See, or who *otherwise have a part in* the promotion of those to be set over the churches (*i.e.*, dioceses), they sin mortally unless they carefully endeavor that those be promoted whom they themselves judge the most worthy (*digniores*) of, and useful to, the Church."

375.—II. *Appointments to Parishes in the United States.*—In like manner, bishops with us, and others—*v.g.*, diocesan councillors—who take part in the appointment of pastors, would seem to commit mortal sin, unless they select[41] not merely a worthy (*persona digna*), but the most worthy, person (*persona dignior*) to fill a vacancy. For the very law of nature demands[42] that those who have the right of appointment to offices or charges, to which the care of souls is attached, shall appoint the worthiest from among the worthy. This obligation, then, devolves upon all who are vested with the power of appointment to parishes; it matters not whether parishes are canonically established or not.

376. *Q.* Is the appointment of a *persona digna* in preference to a *persona dignior* valid?

*A.* 1. Where appointments to parishes must be made *servata forma concursus*, the appointment of a pastor is, *ipso jure*, null and void, unless the *persona dignior* be appointed.[43] 2. In regard to other appointments—*v.g.*, to parishes (*beneficia curata*) where no *concursus* need take place—the question is disputed.[44] 3. The appointment of a *persona digna* to *beneficia simplicia* is admitted by all to be valid. 4. The appointment, however, of a *persona indigna*—*v.g.*, of one under censure, of bad morals, and the like—is always prohibited.

[41] Cfr. Conc. Trid., sess. xxiv., cap. xviii., d. R.

[42] Ferraris, V. Beneficium, art. v., n. 27.

[43] Phillips, Lehrb., p. 152.

[44] Cfr. Reiff, lib. i., tit. vi., n. 248, 249; cfr. Soglia, vol. ii., pp. 188, 189.

nay, as a rule, *ipso jure* null[45] and void, or at least voidable.[46]

377. *Q.* Is it allowed to transfer priests of bad morals from one parish to another, instead of deposing them?

*A.* If the character of such priests is unknown in the new parish, and if there is a reasonable hope that by the change they will reform, it is unquestionably lawful to transfer them to another parish.[47]

*Q.* What qualifications are usually required for the chief civil offices in the United States?

*A.*—I. *Federal offices.* 1. *President and Vice-President of the United States.* The qualifications for President and Vice-President are the same. The candidate must be (*a*) a natural-born citizen of the United States; (*b*) at least thirty years of age; (*c*) he must have been fourteen years a resident within the United States.[48] 2. *United States senators and representatives.* Their qualifications are prescribed by the Federal Constitution, and it is presumed that the States are precluded from adding any other. A Federal *representative* must be twenty-five years of age; an inhabitant of the State which he represents; and for seven years a citizen of the United States. A Federal *senator* must be thirty years of age; an inhabitant of the State which he represents; and for nine years a citizen of the United States. II. *State offices.*—State senators and representatives must, as a rule, have resided in their respective counties or districts one year next preceding their election. No person can be either a Federal or State senator or representative who holds any office under the United States.[49]

[45] Reiff., l. c., n. 248.
[46] Cfr. Craiss., n. 476.
[47] Craiss., n. 488.
[48] Walker, p. 97.
[49] Walker, p. 83.

# CHAPTER IX.

## HOW A PERSON LOSES DELEGATED JURISDICTION.

☞ 378. We have shown above (n. 226 sq.) how *delegated* jurisdiction, voluntary or contentious, is *acquired*. Let us now see how it is *lost*. Delegated jurisdiction is lost chiefly, 1, *by the death, resignation, transfer, or removal of the person delegating*.[1] However, it is necessary to distinguish between delegated jurisdiction which is *voluntary* or *extra-judicial*, and that which is *contentious* or *judicial*. Now delegated jurisdiction which is judicial lapses at the death, resignation, etc., of the *delegans*, provided the trial has not as yet begun by the issuing of the citation (*re adhuc integra*), as we explain above (n. 55) in the case of *rescripta justitiae*. On the other hand, delegated jurisdiction which is extrajudicial, like a rescript of grace conferring a *gratiam jam factam*, is not lost by the death, resignation, etc., of the *delegans*, even though the *delegatus* has made no use whatever, as yet, of his delegated power (*re adhuc integra*), as we show above, n. 56.[2] From this it will be seen that the faculties which our bishops receive from the Holy See do not expire with the death of the Pope conferring them.[3] For these faculties are rescripts of grace, not of justice. For the same reason, the faculties which rectors and assistant priests with us receive from bishops do not expire with the death, resignation, transfer, or removal of the bishop. 2. *By withdrawal*. When and how the *delegans* can withdraw delegated jurisdiction, see our *Counter-points*, n. 37 sq. 3. *By the death of the person delegated*, provided the delegated jurisdiction was given to him personally (*delegatio personalis*), not merely on account of his office (*delegatio realis*).[4] In order to ascertain when a *delegatio* is *personalis* or *realis*, it is necessary to examine

[1] Reiff., l. i., tit. xxix., n. 125.
[2] Konings, comp. n. 151 (6°).
[3] Konings, Comm. in Fac., n. 21.
[4] Phillips, l. c., p. 372.

the *formula delegationis.*[7] If the instrument of delegation expresses the name of the *delegatus*, being formulated,[8] *v.g.*, thus, "Tibi *Sempronio* delegamus hanc causam," the *delegatio* is, as a rule, *personalis;* if it mentions the office and title only, reading, *v.g.*, thus, "Episcopo Novarcensi delegamus hanc causam," the[9] *delegatio* is generally *realis*, and passes to the successor in office, even when the *causa* is *adhuc integra*. We said, as a rule; for these formulas do not always determine the[10] nature of the delegation. In fact, sometimes the instrument of delegation leaves it doubtful whether the *delegatio* is *realis* or *personalis*—*v.g.*, if it mentions not only the name of the *delegatus*, but also his title or dignity, being couched, for instance, in these words, "Tibi Antonio Episcopo Frisingensi," etc. In this case, the context, subject-matter, etc., of the instrument are to be considered in order to determine the character of the *delegatio*. Should no decision be reached in this manner, the *delegatio* must be[11] looked upon as *personalis*.

379. The *facultates*, both *ordinariae* and *extraordinariae*, which our bishops hold from the Holy See, are delegated to them personally,[12] and are therefore *delegationes personales*, not *reales*. Hence, these faculties lapse at the demise of the ordinary, and do not pass to the successor[13] in office. The new bishop, therefore, must have his faculties renewed. *A fortiori*, the *facultates*, are not[14] exercisible by administrators of dioceses, except when they are specially delegated to that effect by the Holy See. The *facultates* contained in the *Form. I.* are usually delegated to them either by the bishop, while yet alive, or after his death by the metropolitan or senior suffragan bishop.[15]

[7] Soglia, vol. ii., p. 450, § 201.
[8] Reiff., l. c., n. 126.
[9] Reiff., n. 127.
[10] Cfr. Soglia, l. c.
[11] Reiff., l. c., n. 128.
[12] Cfr. Craiss., n. 494, 495.
[13] Cfr. Bened. XIV., De Syn. Dioec., lib. ii., cap. ix., n. 3.
[14] Cfr. Conc. Prov. Balt. X., ap. Coll. Lac. iii., pp. 577, 584, 585, 596, 599.
[15] Cfr. Conc. Pl. Balt. II., n. 96, 97, 98.

# CHAPTER X.

## HOW A PERSON MAY LOSE AN ECCLESIASTICAL OFFICE AND THEREFORE JURISDICTIO ORDINARIA (DE CESSATIONE JURISDICTIONIS ORDINARIAE ET VACATIONE OFFICIORUM ECCLESIASTICORUM).

380. *Jurisdictio* is *ordinaria* when it is annexed to and exercised by virtue of an office; hence, a person who is appointed to the office obtains, *ipso facto*, *jurisdictio ordinaria*; on the other hand, one who loses the office loses, *eo ipso*, *jurisdictio ordinaria*. The loss of the one, therefore, is equivalent to the loss of the other, and vice versa. Now, ecclesiastical offices may be lost, and thus fall vacant, not only by the death of the incumbent, but also, 1, by resignation; 2, translation; 3, privation; 4, and in several other ways, as we shall see. Canonists, therefore, properly[1] say that a person may lose an ecclesiastical office in two ways: either voluntarily, as by resignation, or compulsorily, as by removal.[2]

### ART. I.

### *Of Resignations* (*De Dimissione seu Renuntiatione Officiorum Ecclesiasticorum*).

381. By resignation (*renunciatio, cessio, resignatio, spontanea dimissio*) is meant the act[3] by which an ecclesiastic, of

[1] Devoti, lib. i., tit. viii., n. 2.
[2] Soglia, vol. ii., p. 198.
[3] Salzano, lib. iii., p. 257.

his own free will, gives up his office or benefice into the hands—*i.e.*, with the consent—of the proper ecclesiastical superior.[4]

382. From this definition it will be seen that a resignation, in order to be valid, must be, 1, voluntary—that is, not extorted[5] by fear, violence, or deceit and[6] cunning: forced resignations are rescindable. A person, however, does not suffer[7] violence, properly speaking, who, being guilty of some crime, resigns his office for fear of being juridically[8] deprived of it. 2. Resignations must be wholly exempt from simoniacal[9] stipulations—*i.e.*, bargains or contracts to give or receive money or any other temporal thing for the resignation. 3. Finally, the resignation must be accepted by the proper ecclesiastical superior; otherwise it is invalid and of no effect, and the resigner may be compelled to reassume[10] his office. We say, 1, *ecclesiastical superior*, hence no bishop or priest can resign into the hands[11] or on demand of secular rulers; we say, 2, *proper superior*, for it is a general rule that an office can be resigned into the hands of that superior only who is[12] vested with the power of appointment to such office. Thus, bishops can tender their resignations to the Pope only. Parish priests and others holding of the ordinary[13] must, *as a rule*, resign into the hands of the bishop of the diocese, and, according to some,[14] into the hands of vicars capitular (administrators in the United States) *sede vacante*. Vicars-general can accept resignations only when specially empowered by the bishop to do so. We said above, as a rule; because resignations which are tendered by parish priests and the like condition-

[4] Phillips, Lehrb., § 85, p. 161.
[5] Ib., note vii.
[6] Soglia, l. c., p. 199.
[7] Reiff., lib. i., tit. ix., n. 3.
[8] Craiss, n. 502.
[9] Reiff., l. c., n. 75–82.
[10] Ib., n. 13.
[11] Cfr. Phillips, Kirchenr., vol. vii., p. 849.
[12] Phillips, Lehrb., p. 162.
[13] Ib., Kirchenr., l. c., pp. 850, 851, 852.
[14] Ib., pp. 850, 851; cfr. Craiss., n. 509

ally, not absolutely, can be accepted by the Pope only, not by bishops.[15]

383. *Q.* How many kinds of resignations are there?

*A.* 1. Resignations are tacit and express. They are tacit (*renunciatio tacita*) when offices or parishes are given up, not in express words, but by an action which, according to law, entails the loss[16] of the office—*v.g.*, if a cleric in minor orders gets married, or if a person takes solemn vows in a religious order approved by the[17] Church. A resignation is express (*renunciatio expressa*) when the office is resigned in express words or[18] in writing. 2. Express resignations are either absolute (*renunciatio pura*)—namely, when tendered unconditionally—or they are conditional (*renunciatio conditionalis*) when, for instance, persons resign their office for the sake of exchanging it for another or in favor of a third party (*in favorem tertii*)—that is, on condition only that the office be bestowed, *v.g.*, on Caius, a relative.[19] 3. Finally, we distinguish the *resignatio loci tantum* from the *resignatio loci et dignitatis*. Thus, bishops sometimes, though very rarely,[20] resign *quoad locum et dignitatem simul*, and then[21] they cannot lawfully perform any episcopal function, even with the consent of the ordinary. Nevertheless, orders conferred by them are valid, since[22] the *character ordinis episcopalis* is indelible and cannot be taken away by man. Ordinarily bishops resign in this manner, only in order to embrace the monastic state or to prevent juridical deposition.[23] Bishops usually resign *quoad locum tantum*, in which case they may exercise episcopal functions wherever they may be requested to do so by the *Ordinarius loci*.[24]

[15] Phillips, Lehrb., p. 163; cfr. Soglia, vol. ii., p. 200.

[16] Soglia, l. c., p. 198. [17] Reiff., l. c., n. 9. [18] Soglia, l. c., p. 199.

[19] Reiff., l. c., n. 12. [20] Craiss., n. 500.

[21] Cfr. Devoti, lib. i., tit. viii., n. 7.

[22] Ferraris, V. Episcopus, art. iii., n. 76–82. [23] Ferraris, l. c., n. 72

[24] Ib., n. 76, 77.

384. *Q.* What persons can resign their offices?

*A.* Generally speaking, any ecclesiastic may, for just cause,[25] resign his office. We say, *generally speaking*, because there[26] are several exceptions. Thus, 1, no cleric, whether sick or well at the time, can resign within twenty[27] days of his death; 2, no person in sacred orders can, as a rule,[28] resign his office or benefice unless it be certain that he can live comfortably[29] from other sources.[30] Thus, priests in the United States cannot obtain their *exeat* unless they are to be received into another diocese, or have sufficient means for an honest livelihood, or enter a religious community.

385. *Conditional resignations.*—These are: I. Resignations tendered for the purpose of exchanging places. Now, two ecclesiastics are said to exchange places (*permutatio beneficiorum*) when they mutually[31] resign on condition that the office or position of the one be given to the other, and vice versa.[32] Ecclesiastics may, for just reasons, exchange places with each other,[33] provided it be done by authority of the proper superior. Thus, bishops can exchange sees with one another only by authority of the Sovereign Pontiff; priests can exchange places (*v.g.*, parishes) with each other only by permission of the bishop in whose diocese the exchange is to[34] take place.[35] Ecclesiastics exchanging their places without the consent of the respective superior are to be deprived of their positions[36] or offices; nevertheless, they may lawfully arrange and agree[37] among themselves beforehand as to the exchange to be made afterwards with the permission of the bishop.[38]

[25] Craiss., n. 501. [26] Reiff., lib. i., tit. ix., n. 43. [27] Ib., n. 45.
[28] Ib., n. 46, 47. [29] Cfr. Conc. Trid., sess. xxv., cap. xvi., d. R.
[30] Gerlach. p. 275. [31] Soglia, vol. ii., p. 200. [32] Gerlach, p. 275.
[33] Phillips, Kirchenr., vol. vii., p. 869 seq.; cfr. ib., p. 861.
[34] Devoti, lib. i., tit. viii., n. 16. [35] Cfr. Reiff., l. c., n. 82–90.
[36] Soglia, l. c., pp. 200, 201. [37] Reiff., l. c., 102, 103.
[38] Phillips, l. c., pp. 869, 870.

386.—II. Another conditional resignation is that which is made *in favorem tertii* or *prospectu amici*—namely,[39] when an ecclesiastic resigns his place only on the express condition that it shall be conferred upon a person designated by himself. It is commonly held that resignations of this kind can take place only by explicit Papal dispensation,[40] not by permission of bishops.[41] The resigner may, however, lawfully recommend a certain person to the bishop, and express his desire to[42] see him appointed to the office.

387.—III. A third kind of conditional resignations is that which is[43] made *cum reservatione pensionis*—namely, when an ecclesiastic resigns,[44] on condition of receiving an annuity (*pensio*) from the income of the benefice given up by him. Generally speaking, resignations of this kind can be accepted by the Pope[45] only, not by bishops. We say, *generally speaking;* for bishops may permit these resignations in certain cases—*v.g.*, lest an ecclesiastic who resigns his parish on account of old age[46] or sickness should remain without sufficient means of support.

388.—IV. The other conditional resignations are: 1. *Resignatio cum conditione regressus*—namely, when the resigner gives up his place on condition[47] of being reinstated in it at the death of the resignee. 2. *Resignatio cum conditione ingressus*, which[48] consists in this, that the person appointed to a place is obliged, even before taking possession of it, to leave it to another. 3. *Resignatio cum conditione aggressus*,[49] by which an office, being destined for a person under age at the time, is meanwhile given to another, who must resign it when the minor becomes of age. The *jus aggressus* and the *jus regressus* are expressly prohibited by

[39] Phillips, l. c., pp. 860, 861.
[40] Ib., p. 863.
[41] Reiff., l. c., 106–109.
[42] Ib., n. 112, 113.
[43] Phillips, l. c., p. 867.
[44] Gerlach, p. 274.
[45] Reiff., lib. iii., tit. xii., n. 86–89.
[46] Ib., n. 89, 90.
[47] Phillips, l. c., p. 860.
[48] Ib.
[49] Ib.

the Council of Trent,[60] and can be permitted by the[61] Pope only.

389. *Q.* When do resignations take effect—*i.e.*, when is a resigner obliged to discontinue the exercise of the office resigned by him?

*A.* The general rule is that[62] absolute resignations take effect as soon as they are accepted by the proper superior; conditional resignations, only when the conditions agreed upon are fulfilled. Hence, 1, the resignation of a bishop takes effect—*i.e.*, the see becomes vacant—as soon as the resignation is accepted in the Papal Consistory; the bishop may, however, continue to exercise episcopal functions until properly notified[63] of the action of the Holy See; 2, a parish priest who resigns cannot, once the resignation is accepted by the bishop, exercise parochial functions in the parish resigned, except by special permission of the bishop. Hence, the bishop should appoint a vicar or administrator to take charge of the parish until a new rector is appointed.[64]

390. *Resignation of Rectors in the United States.*—Canonical parish priests can resign their parishes conditionally or unconditionally provided there be just cause approved by the bishop.[65] The same holds true of removable rectors, and that even in the case where these rectors who are *amovibiles* are regarded as the *vicars* of the bishop, and are consequently vested only with *delegated* jurisdiction.[a] Our rectors, therefore, removable as well as irremovable, can resign in the same manner as canonical rectors. As, however, our rectors are generally ordained *ad titulum missionis*, and as therefore an unconditional resignation is equivalent to giving up the means of support, they cannot be allowed to resign unconditionally, unless they prove that they have other means of support.

[60] Sess. xxv., cap. vii., d. R.
[61] Phillips, l. c., pp. 871, 872.
[62] Ib., Lehrb., p. 165.
[63] Craiss., n. 511, 512.
[64] Ib., n. 513.
[65] Leuren., For. Benef., p. 3, q. 279.
[a] Ib., q. 291.

## ART. II.

### *Of Transferring Ecclesiastics from one Place to Another (De Translatione).*

391. An ecclesiastical office may also become vacant, as was seen, by reason of its incumbent being[56] changed or transferred (*translatio*) to another place.[57] Ecclesiastics cannot be transferred except by authority of the proper superior. Thus, bishops are transferred by the Holy See;[58] parish priests by their bishops.[59] In like manner, bishops cannot, without permission from the Holy See, transfer their sees from one city to another in the diocese, nay, not even from one church to another in the same city.[60]

392. *Causes that render changes or transfers lawful.*—It is a general principle that ecclesiastics should not be transferred from one place to another without sufficient reasons[61] (*causae justae*). Now, the reasons for which bishops, parish priests, and the like may be changed by their respective superiors are reducible[62] chiefly to two: 1, *utilitas*—*v.g.*, if the transfer is believed to be conducive to the good either of the entire Church or of a particular church, whether episcopal or parochial, to which a person is to[63] be transferred; 2, *necessitas*—*v.g.*, if a bishop cannot remain in his diocese, or a parish priest in his parish, on account of the unwholesomeness of the climate, or by reason of persecutions, etc.[64]

393. *Q.* Can the Pope transfer bishops even against their will?

*A.* The question is controverted.[65] According to some

[56] Phillips, Lehrb., § 87. p. 165.
[57] Cfr. Reiff., lib. i., tit. vii., n. 2.
[58] Ib., n. 3.
[59] Phillips, l. c., p. 166.
[60] Salzano, lib. iii., p. 256.
[61] Phillips, l. c.
[62] Cap. 5 (iii. 19).
[63] Reiff., l. c., n. 10.
[64] Craiss., Man., n. 522, 523.
[65] Ib., n. 525.

canonists, the Pope may do so *ex causa justa*, but not[66] *pro libitu*. The question is of no practical consequence, since, at the present day, bishops are not transferred against their will.[67] Generally speaking, a bishop is transferred only from an inferior to a greater see.[68] We say, *generally speaking;* since, in case special reasons so demand, a prelate may be transferred from an archiepiscopal to an episcopal see, nay, from a bishopric to a parish.[69]

394. *Q.* Can a bishop transfer parish priests or rectors, also with us, against their will from one parish or mission to another?

*A.* There is question either of rectors who are *inamovibiles*, or of rectors who are *amovibiles*. I. *Irremovable rectors*, also with us, cannot be validly transferred, except upon these three conditions: 1. There must be *a cause* of necessity or evident utility which is both very grave and most urgent;[70] *v.g.*, where a rector by violent temper and the like has drawn upon himself the implacable hatred of his parishioners. 2. These causes must be *legitimately established.* 3. The transfer must be to a parish which is *better than*, or at least *equal to*, the former parish, both as regards honor and income.[71] For the general law of the Church, in common with the sentiment of all mankind, looks upon a transfer to an *inferior* or *smaller* place as reflecting discredit and dishonor both upon the better office or place itself and upon the person transferred. Thus in 1198 Pope Innocent III., in a decretal letter, embodied in the general law of the Church, severely reproaches the Patriarch of Antioch for having transferred an ecclesiastic to an *inferior or minor place*, and thus *belittled* and *disgraced* the ecclesiastic transferred to a minor place. His words are: "Miramur quod L. transtulisti, et novo quodam mutationis genere *parvificasti* majorem, et magnum

[66] Reiff., l. c., n. 20–27. [67] Phillips, Lehrb., p. 166. [68] Reiff., l. c., n. 7.
[69] Ferraris, V. Episcopus, art. iii., n. 48. [70] Cap 5, *De Rer. Perm.* (iii., 19).
[71] S. C. C., Dec. 19, 1859; Præl. S. Sulp., vol. iii., n. 693; Acta S. Sedis, vol. ii., p. 284.

quodammodo *minorasti*."[72] This Pontiff reiterates these same sentiments, in as strong language as possible, in his decretal letter *Licet in tantum*,[73] written in 1199 to the Bishop of Mayence, Germany.

This law is based upon and consonant with the sentiment and natural feelings of all mankind. In fact, as a transfer to a *better* parish or place is considered by men an *honor* and a *promotion*, so inversely, the transfer to a *worse* one is regarded by them as a *humiliation* and a *disgrace*, and as *lowering* the transferee in the estimation of others. Men will generally prefer to give up an office altogether rather than be put down to a minor grade or office. Their feeling in this matter arises from the fact that not unfrequently it is considered a greater disgrace to be put back or transferred to a minor place than to be dismissed altogether[74] Accordingly, canonists all agree, as we shall show more fully in the *third* volume of this work, that a transfer to a worse or minor place, inflicting, as it does, dishonor and also diminution of income, is a *punishment*, and is placed on the same footing with dismissal proper or *privatio*.[75]

It is on these principles that the Holy See always requires that when a parish priest is transferred for causes other than criminal, he must be given a parish better than or at least equal to his former parish, and that he can be transferred to an inferior one only in punishment of delinquencies.[76]

395. II. *Removable rectors*, also with us, can be transferred even against their will, for causes less grave and imperative than are required for the transfer of irremovable rectors, yet

[72] Cap. 1, De Transl. (I., 7). [73] Cap. 4. De Transl. (i., 7).

[74] Cfr. Pierantonelli, l. c., p. 107 sq

[75] Walter, § 259; Permaneder, §§ 274. 275; Phillips, § 188.

[76] S. C. C. Eiestett., Sept. 21, 1742; S. C. C. *Limburg.*, Dec. 19, 1857; S. C. C., Dec. 22, 1860; cf. Acta S. Sedis, vol. i., p. 519; S. C. C., April 26, 1871; cf. Analecta, 1875, p. 579.

not without grave and reasonable cause, proved or verified by the bishop, at least by an extrajudicial investigation. Thus the S. C. de P. F., in its answer *Ad Dubia* regarding the Instruction of July 20, 1878, speaking of our removable rectors, decrees: *Episcopi vero curent ne sacerdotes sine gravi et rationabili causa de una ad aliam missionem invitos transferant.* Likewise, the S. C. C. *in Una Civitaten.*, Dec. 1585, decided in regard to rectors and others *amovibiles ad nutum*, as follows: *Ne ab ordinario quidem vicarium curatum amoveri posse, nisi ex causa legitima atque probata.*[11] Hence the secretary of the S. C. C., in his *folium* on the removal or transfer of a removable rector brought before the Sacred Congregation, Dec. 18, 1847, says: *S. Congregatio eam visa est semper retinere doctrinam, ut sine causa removeri nequeat sive capellanus sive vicarius curatus* [*rector amovibilis*] *uti luculentissime constat ex Spoletana* 8 *Julii* 1713.[a] Again the secretary of the S. C. C., in his *folium* on the transfer of a succursal rector in France, *amovibilis ad nutum episcopi*, brought before the Sacred Congregation in 1870, says: "Praeterea illud quoque haud praetereundum puto, quod licet rectores ecclesiarum succursalium amoveri valeant ad beneplacitum episcopi, *nequeunt tamen amoveri absque rationabili causa.* Unde limitibus circumscripta est episcopalis potestas. Quas limitationes, eo quo pollet ingenio, ingenii acumine Card. de Luca colligit, disc. 97, de Benef. Man., n. 11, 12, nempe ne remotio fiat ex odio et malitia superioris; ne ex amotione dedecus aut infamia, aut aliud grave praejudicium amoto causetur; unde eruit ex quadam non scripta aequitate *competere recursum ad superiorem*, et quod necessaria sit aliqua saltem *summaria cognitio causae;* unde necessitas erumpit conficiendi *processum saltem extrajudicialem et summarium.*[b]

[11] Causae Selectae, Lingen et Reuss, p. 853.

[a] Causae Selectae, l. c.

[b] S. C. C. 22 Martii, 1873; Analecta, 1875, p. 607.

We have said, "*at least*, by an extrajudicial investigation;" for there are some canonists who maintain that a *judicial* investigation must precede all compulsory transfers even of removable rectors, no less than their absolute dismissal. See Mgr. Pierantonelli, now *defensor S. Vinculi*, at Rome, in his learned work, *Praxis Fori Ecclesiastici*, p. 107 sq., Romæ, 1883. This book bears the *Imprimatur* of the *Magister S. P. A.*, and also of the archbishop-vicegerent of Rome, and therefore cannot be said to advance an opinion which is improbable.

It is therefore plain that the power to transfer *ad nutum* does not mean the power to transfer *arbitrarily;* for, as Lotterus,[c] De Angelis,[d] and canonists in general say, when the right is given to the superior to act or transfer *ad nutum*, this will or *nutus* must be directed by reason and natural justice. Besides, where a person is transferred for causes other than criminal, the transfer must be made in such a manner as not to injure his reputation or inflict disgrace or any other grave injury upon him. (S. C. C. in *Ast.*, 27 Julii 1867, et in *Dinien.*, 27 Martii 1886; Acta S. Sedis, vol. xix., pp. 53, 54.) Hence a superior or bishop who transfers a removable rector without sufficient cause, acts unjustly. Consequently, the ecclesiastic thus transferred may have recourse to the superior. De Angelis says that, as a matter of fact, when the superior or bishop transferring or removing does not give just reasons, or gives no reasons at all for his action, the Holy See, to whom the person transferred has recourse, is accustomed to annul the transfer, and reinstate the rector thus transferred or removed.[e] Hence priests in the United States are not *obliged* to accept of any and every mission offered them by the bishop,[f] though

[c] De Re benef., l. i., q. 33, n. 31 sq.

[d] Prael., l. i., t. 28.

[e] Ib., n. 7.

[f] Cfr. Instructio S. C. de Prop. Fid. 16 Oct. 1830, circa Decr. Conc. Prov. Balt. I. in the Collection of *Conc. Prov. Balt.*, pp. 64, 65. Baltimori, 1851.

they are *admonished* "ut non detrectent vacare cuilibet missioni ab episcopo designatae."[78] Of course, no priest can leave his mission without permission from his bishop.[79]

396. *Effects of Translation.*—The office, whether it be that of a bishop or pastor, from which a person is transferred, becomes vacant,[80] *ipso jure*, by the transfer; hence its income no longer goes to the person transferred.

397. *Q.* At what precise time does a person transferred lose jurisdiction in the diocese or parish from which he is changed?

*A.* There is question of the translation either of a bishop from one see to another, or of an ecclesiastic from an inferior to a higher position—*v.g.*, from a parish to a bishopric—or, finally, of an ecclesiastic to a non-prelatical office—*v.g.*, from one parish to another.[81] 1. If a bishop is transferred at his own request,[82] or with his knowledge and consent, he loses *jurisdictio ordinaria* in the diocese from which he is changed[83] the moment he receives *certain* information that his translation has been decreed in Papal Consistory. It matters not whether the information comes through letters from the Secretary of the Sacred College, or in any other way, provided it is such as may be relied upon. Nay, the very moment a bishop is transferred in Consistory, and consequently before he is informed of the fact, he loses the power of appointment to parishes that become vacant at the time.[84] If, however, a bishop is transferred without his knowledge, he does not, *as a rule*, lose jurisdiction, as stated above, except on giving his consent.[85] Practically speaking, however, this supposition is of no consequence;[86] for, as Benedict XIV.[87] writes, *juxta vigentem disciplinam*, "transla

[78] Conc. Pl. Balt. II., n. 108.
[79] Cfr. Instructio, cit.
[80] Phillips, l. c., p. 167.
[81] Craiss., n. 528.
[82] Reiff., l. c., n. 35-41.
[83] Bouix, De Episc., vol. i., pp. 390, 391.
[84] Ib., vol. i., p. 391.
[85] Ferraris, V. Episcopus, art. iii., n. 62.
[86] Bouix, l. c., pp. 390, 391
[87] De Syn. Dioec., lib. xiii., cap. xvi., n. 13.

tiones nunc minime fiunt, nisi praevia scientia et consensu episcopi, qui ab una ad aliam Ecclesiam est transferendus." 2. In the second case, if, for instance, a pastor is elevated to[88] the episcopate, he loses his parish, ipso facto, the moment he is consecrated bishop, or when the time for the consecration has elapsed—to wit, three months after being confirmed by the Holy See.[89] 3. A parish priest, for instance, who is transferred from one parish to another, loses the old as soon as he has, or could have, obtained peaceable possession of the new parish.[90]

398. *Q.* Until what time can a person receive his income or salary from the church whence he is transferred?

*A.* 1. A bishop who is transferred from one see to another, with his own consent, can draw his income from the diocese which he leaves only up to the[91] moment his translation is pronounced in Papal Consistory. If, however, a bishop is transferred without his knowledge,[92] he may draw his income in the usual manner from the old diocese until he gives his consent to the translation. 2. An ecclesiastic (*v.g.*, a pastor) promoted to a bishopric has the right to draw his salary from his[93] parish or office down to the time of his consecration, or till the lapse of three months after his confirmation as bishop. 3. Pastors, for instance, who are transferred from one parish to another,[94] may receive the income of the old parish until they have possession of the new one. This is also the custom of this country.

399. *Q.* To whom belong the proceeds of an office during its vacancy?

*A.* To the vacant church. Hence, the revenues of a vacant bishopric or parish should be used to defray the necessary expenditures of the vacant church; what is left

[88] Cfr. Blackstone, 1 Com., ch. xi

[89] Cap. Licet Episc. xxviii., De Praebendis in 6to.

[90] Craiss., n. 529.

[91] Bened. XIV., l. c., n. 7.

[92] Ib., n. 13.

[93] Craiss., n. 532.

[94] Ib., n. 533.

goes, as a rule, to the successor[95] in office. This, it would seem, applies also to the *cathedraticum* received by bishops in the United States.

400. *Q.* How are the fruits or products of a benefice to be divided between the one who is transferred or has resigned and his successor in office?

*A.* This question has reference[96] chiefly to the produce, fruits, or crops gathered from tracts of land often attached to parishes in Europe, and sometimes also in the United States.[97] The question, as stated, is controverted. Ferraris,[98] with others, holds that only the crops which are already harvested (*fructus percepti*) belong to the predecessor[99] or first titulary, while the crop not yet gathered in, or the fruits which are still hanging or unplucked (*fructus pendentes et inexacti*), pertain to the church or the successor in office. Others, however, maintain that the *fructus pendentes* also belong to the person transferred, *pro rata*[100] *temporis.* The maintenance of bishops in the United States is derived from the *cathedraticum*[101] and the salary of the cathedral. In the case of translation or death of a bishop with us it would seem that the cathedraticum,[102] though already received by the transferred or deceased bishop, should be divided, *pro rata temporis*, between the predecessor or his heirs and the successor in office.

## Art. III.

### *How Ecclesiastics are dismissed from Office, also in the United States.*

(*Privatio.*)

401. Having, in the foregoing article, spoken of *transfers*, we come now to *dismissals.* By dismissal (*privatio*) is meant

[95] Craiss., n. 534.
[96] Cfr. Ferraris, V. Episcopus, art. iii., n. 65.
[97] Cfr. Kenrick, Mor. Tract. x., n. 36.
[98] L. c., n. 63–66.
[99] Cfr. Craiss., n. 535.
[100] Ap. Ferraris, l. c., n. 66.
[101] Cfr. our Notes, etc., pp. 86, 87.
[102] Cfr. Conc. Pl. Balt. II., n. 100.

not simply a transfer from one office or parish to another, but *an absolute removal* from office. Dismissal is of three kinds: 1. *Privatio*, by which an ecclesiastic is merely removed from office or parish, but not disqualified from holding offices in future.[103] 2. *Depositio*, by which an ecclesiastic is not merely dismissed, but also disqualified forever to hold office in future, or to exercise ecclesiastical functions. 3. *Degradatio*, moreover, causes the loss of ecclesiastical privileges, especially of the *privilegium fori et canonis*.[104] We shall at present speak more directly of *privatio*, or simple dismissal, rather than of deposition or degradation. However, it is plain that what is said respecting dismissal applies *a fortiori* to deposition and degradation. For deposition or degradation is nothing else than dismissal in an aggravated form.

402. According to the present discipline of the Church, clerics holding ecclesiastical appointments are of two kinds: Some are appointed for life and are *irremovable;* others are not appointed for life, but *ad beneplacitum*,—*i.e.*, for an indefinite period,—and are *removable*. Accordingly, we shall point out under separate headings how both these kinds of ecclesiastics are deprived of their offices.

### § 1. *How "irremovable" incumbents are dismissed.*

403. The offices whose incumbents are *inamovibiles* are chiefly those of bishops, canons, and canonical parish priests.

404. I. *Dismissal of Bishops from their Office.*—Jansenists and no small number of Gallican authors assert that,[105] prior to the Council of Sardica (anno 347), the right to pronounce *definitively* sentence of deposition against bishops was vested exclusively in provincial councils, so that not even the right of appeal to the Holy See was allowed.[106]

[103] Phillips, Lehrb., § 188, p. 396.

[104] Reiff., l. v., t. 37. n. 22 sq.

[105] Cfr. Craiss., n. 540.

[106] Cfr. Bouix, De Episc., vol. i., pp. 318, 319.

This assertion, it need scarcely be said, is without even a shadow of foundation. Pope Julius I. (a. 336–352), for instance, in his letter to the[109] Arian bishops, by whom Athanasius[110] had been deposed, explicitly[111] asserts that, *according to the custom or discipline then prevalent in the Church* (namely, in the fourth century), final sentence should not be pronounced upon bishops by provincial councils, except by command or direction of the Holy See. In like manner, Pope Gelasius[112] (492–496), in his epistle to the bishops of Dardania, distinctly affirms that the Holy See, *in accordance with established usage* (*more majorum*), not unfrequently reinstated bishops who had been deposed by provincial councils. Hence, we may safely lay down the following proposition: *The power of deposing bishops was at all times reserved exclusively to the Roman Pontiff.*[113] Bishops, it is true, were not unfrequently, down to the Middle Ages, deposed by provincial councils; but this judgment could be set aside, nay, it would seem had no effect, as a rule, unless affirmed by the Holy See. Provincial councils, therefore, at most, were courts of the first instance (*in prima instantia*), at least in some sense.

405. *Discipline of the Church at the Present Day relative to the Dismissal of Bishops.*—1. The *causae majores*[114] *criminales* against bishops—those, namely, which merit deposition (*depositio*) or deprivation (*privatio*)—can be decided, even *in prima instantia*, by the Sovereign Pontiff only.[115] The exclusive reservation of this right to the Pope began in the Middle Ages,[116] and was confirmed by the Council of Trent. The right itself is inherent in the Primacy; the Pope, as the

[109] Craiss., n. 541.
[110] Cfr. Labbe, Conc., tom. ii., p. 494.
[111] Cfr. Wouters, Hist. Eccl., vol. i., p. 96.
[112] Cfr. Darras, Eccl. Hist., vol. ii., p. 46.
[113] Bouix, De Epis., vol. i., p. 322.
[114] Ib., p. 323
[115] Conc. Trid., sess. xxiv., cap. v., d. R.
[116] Phillips, Lehrb., § 99, pp. 187, 188.

chief pastor, is the *judex ordinarius* of bishops. 2. If criminal causes of bishops are tried in Rome, the Sovereign Pontiff should personally take cognizance of them;[117] *de jure extraordinario*, however, he may, in fact does, authorize others—*v.g.*, committees of cardinals[118]—to act in his stead. Thus, at present, the *S. C. Episcoporum* takes cognizance of grave charges against bishops, and even pronounces sentence of deposition, *facto*, however, *verbo cum Sanctissimo* (*i.e.*, *Papa*) *per secretarium*. Criminal charges against bishops in the United States, and missionary countries in general, are adjudicated upon by the Propaganda. 3. If, however, the hearing of the case or trial must take place[119] on the spot, or in the province to which the accused bishop belongs (*v.g.*, because the evidence sent to Rome does not sufficiently establish the guilt of the defendant), the Pope should, as a rule, appoint none but archbishops or bishops to investigate the case and report the facts to the Holy See, by whom alone, even in this instance, judgment is to be pronounced. 4. The less criminal causes of bishops are determined upon by provincial councils. 5. The Roman Pontiff cannot,[120] at least lawfully, depose bishops except for legitimate cause. Nor should he, as a rule, depose them without trial. We say, *as a rule;*[121] for all Catholic writers seem to agree that, under certain circumstances—when, namely, the welfare of the Church so demands—bishops may be deposed without the ordinary forms of judicature, as was done in France in 1801.[122]

406.—II. *Canons*, and the greater number of beneficiaries, are also, though only by ecclesiastical institution, irremovable. Hence, they are not deposable, save by trial and juridical sentence.[123]

[117] Bouix, l. c., vol. i., p. 324.
[118] Cfr. ib., p. 329.
[119] Conc. Trid., sess. xxiv., cap. v., de Ref.
[120] Craiss., n. 549.
[121] Ib., n. 550.
[122] Ib.
[123] Ib., n. 551.

407. III. *Parish Priests* proper are also, according to the present gêneral law of the Church, *irremovable.*[124] However, this is not to be understood in the sense that these rectors can in no case be removed, but simply in the sense that they cannot be dismissed from their parishes save for certain sufficient causes and by certain forms of law. What, then, are these causes and these formalities? We shall presently give the answer under the subjoined question. We observe with Father Konings (comp. n. 1693), that the withdrawal of faculties (*revocatio facultatum*) with us is equivalent to, and therefore can be inflicted only in the same manner as, privation proper (*privatio parochiae*).[125]

### § 2. *Causes and Manner of Dismissal of irremovable Rectors, also in the United States.*

408. *Q.* For what causes and in what manner can rectors who are canonical parish priests, and who are consequently irremovable, be dismissed from their parishes?

*A.* 1. Only for *crimes*;[126] 2, which are very grave; 3, and expressly stated in law; 4, and upon a regular—*i.e.*, formal or solemn—canonical trial (*servato juris ordine*).[127] We say, *only for crimes;* now, what are the particular crimes for which dismissal can be inflicted? We shall give the answer in the following article. We say again, *upon a trial;* consequently privation of parish or dismissal cannot be inflicted *ex informata conscientia.* In fact, the Council of Trent empowers bishops merely to inflict *suspension.* but not dismissal *ex informata conscientia.*[128] We say also, that the trial must be a *formal canonical trial.* Hence a *summary* canonical trial is not sufficient. However, the S. C. EE. et RR., by its Instruction of June 11, 1880, modified this prescription of canon

[124] Phillips, Lehrb., p. 342, § 168. [125] Konings, n. 1693.
[126] Can. 38. c. 16, q. 7; cap. Conquerente 7 (ii. 13).
[127] Bouix, De Par., p. 365.
[128] Conc. Trid., sess. xiv., c. 1, De Ref.; Bouix, De Jud., vol. ii. pp. 341, 354.

law by expressly authorizing Ordinaries of Catholic countries in which canon law obtains to make use of the *summary* trial laid down in the above Instruction, whenever it was impossible or inexpedient to observe the formalities of the *regular* or *solemn* canonical trial. Of course the *proofs* of guilt must always be *full and conclusive*, no matter whether the trial is solemn or only summary. In other words, dismissal can be inflicted only when the guilt is *fully* (*probatio plena*) established in the trial. Half proof (*probatio semiplena*) is never sufficient for conviction.[129]

☞ 409. *Q.* How are irremovable rectors in the United States dismissed from their parishes or missions?

*A.* We premise: There are at present two kinds of rectors with us. Some are irremovable; others are not. We now answer in the words of the *Third Plenary Council of Baltimore:*[130] "Rector missionarius permanenter institutus seu inamovibilis, a sua missione definitive removeri non poterit, nisi ob *causam canonicam*, et tam in remediis praeventivis quam repressivis servata forma procedendi juxta normam Instructionis S. Congregationis de Propaganda Fide, de cognoscendis et definiendis causis criminalibus et disciplinaribus clericorum, quae incipit *Cum Magnopere* nuperrime ad Episcopos Foederatorum Statuum Americae Septentrionalis directae." From this it will be seen that our irremovable rectors can be dismissed only for crimes expressly stated, and by trial, which, however, is always summary with us, and never solemn.

### § 3. *Offences for which Irremovable Rectors may be deprived of their Parishes, also in the United States.*

410. We have said (n. 408) that parish priests can be dismissed only for crime. Here the question arises: What are the crimes for which irremovable rectors also in the United

[129] Bouix, De Par., p. 367. [130] N. 38.

States, can be dismissed? Speaking in general, the crime must be (*a*) not merely grave, but *very grave and atrocious*. For dismissal is a most *severe punishment*. Now there must always be a just proportion between the crime and its punishment. (*b*) It must be *expressly stated* in law.[131] This holds true whether the dismissal is inflicted *ipso jure* or *per sententiam judicis*.[132] The law gives the Ordinary a certain amount of discretionary power in the infliction of *minor* punishments, but does not allow him to impose those which are *severe*, except in cases expressly stated. Hence, as Reiffenstuel (l. c.) says, dismissal is never to be inflicted save in the cases *expressed* in law. Having discussed the *general* character of the crimes requisite for dismissal, we shall now enumerate the *particular* offences that can be visited with dismissal.

☞ 411. *Q.* What are the particular crimes for which dismissal can be inflicted upon irremovable rectors, also with us?

*A.* We premise; According to law, dismissal is inflicted in two ways: 1. *Ipso jure;* in this case no *condemnatory* sentence is required, the penalty being inflicted by the law itself.[133] As a rule, however, a *declaratory* sentence is necessary, and, consequently, parish priests are not, generally speaking, bound in conscience to lay down their office before their guilt has been *judicially declared*.[134] Nevertheless, the sentence in this case is *retroactive—i.e.*, takes effect from the time the crime was committed, not merely from the time sentence was pronounced.[135] 2. *Per sententiam;* in this case a *condemnatory* sentence is indispensable[136]—*i.e.*, the guilty parish priest is to be actually sentenced to dismissal from his parish. Such sentence takes effect only from the moment it is pronounced.[137]

[131] Can. *Apostolus* 1, Dist. 81.

[132] Reiff., l. iii., t. 5, n. 368, 370.

[133] Reiff., l. c., n. 368.

[134] Ib.

[135] Bouix, De Paroch., pp. 368, 369.

[136] Craiss., n. 557.

[137] Reiff., l. c., n. 369.

412. We now answer: I. The offences for which irremovable rectors, also in the United States, are *ipso jure* deprived of their parishes or missions are chiefly:[138] 1. Heresy. 2. Falsification of apostolic letters. 3. Assassination; by assassins we here mean not only those who commit the deed, being hired to do so, but also those who hire them.[139] 4. Killing or striking a cardinal or bishop.[140] 5. Procuring abortion. 6. Sodomy. 7. Simony; the penalty of dismissal from parish is incurred only by *simonia realis, confidentialis, et mixta*, not by *simonia mentalis*.[141] 8. Duel, even when death does not ensue. 9. Usurpation of the property of any church or *locus pius*.[142] 10. If a parish priest, without having leave from the Holy See, alienates, except in cases permitted by law, property belonging to his parish. 11. If he, having been improperly promoted to sacred orders—*v.g.*, *per saltum*, without a canonical *titulus*,[143] or without letters dimissory, or before the legitimate age—presumes to exercise the orders thus received. 12. For omitting to receive orders within a year. Thus, if a person not yet ordained obtains a parish, he is bound, under pain of losing his parish *ipso jure*, to receive the order of priesthood within one year from the time of his appointment.[144] This penalty, however, is not incurred if the appointee was lawfully hindered from receiving orders within the prescribed time—*v.g.*, by sickness, etc.

413.—II. The offences to which dismissal from parish is annexed only post judicis sententiam are chiefly:[145] 1. Neglect

[138] Cfr. our Notes, p. 119.
[139] Craiss., n. 558.
[140] Bouix, De Paroch., p. 374.
[141] Ib., p. 374.
[142] Soglia, vol. ii., p. 204.
[143] Bouix, l. c., p. 372.
[144] Bouix, De Paroch., pp. 370, 371.
[145] A number of bishops from Germany proposed at the *Vatican Council* that *simplex fornicatio notoria, concubinatus manifestus, ebrietas necnon prodigalitas incorrigibilis atque scandalosa* should also constitute legitimate causes for dismissal from canonical parishes. (Martin, l. c., p. 173.)

to wear a becoming clerical dress.[146] 2. Non-residence in the parish.[147] 3. Usury, drunkenness, gambling, murder, perjury, theft, and the like. 4. *Insordescentia in censura.*—A parish priest who falls into excommunication or suspension cannot be dismissed simply because he is under censure,[148] but only when, with *obdurate heart*, he remains for a year under censure, and thus, so to say, contemns the authority of the Church. 5. If a parish priest has become irregular, because of having committed an offence punishable with dismissal.[149] Concubinage and simple fornication. It is a mooted question whether, *de jure communi*, a bishop can *without previously warning* or suspending the guilty parish priest, proceed *immediately* to inflict dismissal for repeated acts of fornication, or even for one act only.[150] We say, *de jure communi;* for, where custom sanctions it,[151] dismissal in such case may undoubtedly be inflicted *at once*.[152] Again, when there is proof merely of familiarity with a woman of bad fame, but not of carnal acts,[153] the bishop cannot proceed to dismissal except after he has previously warned or suspended the guilty parish priest.[154]

☞ 414. To these crimes for which dismissal is imposable, also with us, "per sententiam judicis," the *Third Plenary Council of Baltimore* has added the following for the dismissal of our irremovable rectors:[155] 1. "Inobedientia pertinax *in re magni momenti* regulis ab Ordinario sive pro administratione ipsarum etiam temporalium rerum suae missionis, sive pro oneribus dioecesanis sublevandis. 2. Aperta detrectatio mandatorum Ordinarii post repetitas admonitiones ad scholas catholicas sustentandas cum gravi earum

[146] Conc. Trid., sess. xiv., cap. vi., d. R.
[147] Soglia, vol. ii., p. 204.
[148] Bouix, l. c., pp. 372, 373.
[149] Ib., p. 373.
[150] Ib., pp. 375, 386.
[151] Ib., p. 393.
[152] Cfr. Conc. Trid., sess. xxv., cap. xiv., d. R., and sess. xxi., cap. vi., d. R.
[153] Bouix, p. 386.
[154] Craiss., n. 559.
[155] Conc. Pl. Balt. III., n. 37.

damno, vel ad novas erigendas, postquam Ordinarius re mature ponderata declaravit, considerata Missionis conditione, scholas novas erigi posse et debere. 3. Temeraria et post admonitionem repetita susceptio aeris alieni pro ecclesia seu missione, vel pro ipso sacerdote, sine Ordinarii licentia; aut manifesta inobedientia in solvendis debitis contractis. 4. Collusio cum aedituis laicis ad dandum nomen ecclesiae (note) in acquisitionem *falsam* pecuniae veluti debitae ipsi rectori. 5. Fraudulenta deceptio Ordinarii per deliberatam falsitatem in annua relatione status spiritualis ac temporalis missionis, in re scilicet magni momenti vergente ad grave detrimentum missionis ipsius. 6. Publica et perdurans infamatio quoad mores sacerdotales, qua cura animarum grave damnum patiatur. 7. Si quis rector inamovibilis absque sua culpa redditus vel compertus est notoria ratione et permanenter inhabilis ad missionem administrandam, is inducendus est, ut sponte renuntiet. Si vero id recuset et per iuris remedium, constituendo ei scilicet vicarium cum congrua pensione (Conc. Trid., sess. xxi., c. 6, De Ref.; et Bened. XIV., De Syn. dioec., l. xiii., c. 9, n. 21, et cap. 10, n. 16) provideri nequeat, Episcopus, propter speciales missionum nostrarum conditiones, ex gravissima causa legitime demonstrata, poterit etiam sic irrationabiliter invitum amovere. Sive autem amoto sive sponte renuntianti procurabit pensionem, quæ ex consultorum consilio congrua censebitur, eique titulum rectoris emeriti conservabit."

### § 4. *Dismissal* (PRIVATIO) *of Removable Rectors, also in the United States.*

415. According to the general law of the Church, as enacted already by Pope Innocent III. in the General Council of the Lateran (1216),[156] by Pope Boniface VIII. (1294–1303),[157]

[156] Cap. 30, De Praeb. et Dign. (iii. 5).
[157] Cap. Unic. de Capell. Mon. in 6° (iii. 18).

and confirmed by the Council of Trent,[158] and still in full force, the care of souls or the office of rector of a parish is to be conferred upon the incumbent *for life*, so that he cannot be dismissed except for certain specified crimes and upon a formal trial. Consequently, according to the general law of the Church, irremovability is one of the prerogatives of a rector of souls or parish priest in the true and canonical sense of the word. This is in full harmony with the nature of the office itself and of the duties incumbent upon one who is in charge of souls. For no one will deny that, while the duties of a rector of souls can be, absolutely speaking, discharged by one who is removable, yet they will be performed much better and with greater profit to souls by a rector who is irremovable, and who is therefore the *father*, the *spouse*, and the true *shepherd* of his flock, than by one who is removable *ad nutum*, and who is, in consequence, not regarded as a true shepherd, in the full sense of the term.[159]

416. We say, *by the general law*; for, exceptionally, and by *special law*, namely, by apostolic indult or dispensation, or by prescription, or by stipulation inserted in the act or instrument of foundation, or also by reason of the missionary status of a country which makes it impossible to establish parishes, the Church admits of a derogation from the common law, and allows, by way of *toleration* rather than approval, the care ot souls to be sometimes exercised by rectors who are removable.

Accordingly there are at present, especially in France, Belgium, and England, two kinds of rectors—removable and irremovable. This discipline prevails now also in this country. For, according to the *Third Plenary Council of Baltimore*, held in 1884, a certain number of rectors in each diocese are irremovable; the others remain, in consequence, removable as under the Instruction *Quamvis* of July 20, 1878.

[158] Sess. vii., cap. 7, De Ref.; sess. xxiv., cap. 13, De Ref.

[159] S. Jo. x. 12.

☞ 417. *Q.* For what cause and in what manner can rectors who are *amovibiles ad nutum* be *dismissed* (*i.e.*, deprived of, not merely transferred from) from their parishes or missions, also in the United States?

*A.* Before answering, it is necessary to explain what is meant by the *amovibilitas ad nutum*, and by the power of the ordinary to remove *ad nutum.* The Church, to use the words of the learned Santi, Professor of Canon Law in the Pontifical Seminary at Rome, in his *Praelectiones*, issued at Rome in 1886, abhors all *arbitrariness* and *despotism*, in its government, and requires that all superiors who are clothed with authority and have power to remove, shall exercise their authority according to right reason, natural justice, and equity.[160] Consequently it is certain, speaking in general, that the power to remove as they say *ad nutum* does not mean an *arbitrary* or *unrestricted* power to inflict dismissal,[161] but a *limited* power, exercisable according to right reason, and therefore only for a sufficient cause, proportionately greater or less, according to the higher or lower grade or dignity of the office which is to be taken away.

This principle, while it applies in general to all dismissals of removable incumbents, applies with special force to the dismissal of removable ecclesiastics who are appointed not merely to perform some *transient* or *passing* function or ministry, such as to say mass, preach, or hear confessions on a certain day or days, but to an office which necessarily by its very nature brings with it *continuous* and *constant* duties, such as the care of souls, and which therefore has *per se* irremovability annexed to it.[162] It is beyond doubt, therefore, that the power to remove *ad nutum*, especially when applied to rectors of souls, is essentially a *limited* power, and hence a power exercisable only for cause.

[160] This principle is clearly laid down already by Pope Gregory, in the can. *Inventum* 38, c. 16, q. 7; can. *Satis perversum* 7, dist. 56.

[161] Santi, Prael., lib. i., tit. xxviii., n. 12.

[162] Santi, l. c.

418. Here, then, the question naturally presents itself: What is considered a sufficient cause in law for the dismissal of a removable rector? We answer: The law of the Church, while it allows, as we have seen, of *transfers* of rectors, even against their will, not merely for crime, but also for other causes of necessity and utility, regards *crime* as the only sufficient cause for dismissal, even of removable rectors. For it is a general principle of canon law, laid down by Pope Gregory, that an ecclesiastic, even though he be *amovibilis*, shall not be deprived of his office, especially when the care of souls is annexed to it, *except when he has made himself unworthy of it by crime.*[163] This principle is founded upon natural justice. For the dismissal, even of a removable rector, inflicts plainly both disgrace and pecuniary loss, and is therefore a *punishment*—nay, a punishment of the gravest kind. Now there can be no punishment where there is no *crime*, according to the rule of law: "Sine culpa, nisi subsit causa, non est aliquis puniendus."[164] But it will be objected, that if this be true, there is no longer any difference between removable and irremovable rectors. We deny the inference. For in the case of irremovable rectors the bishop or superior has *no discretionary* power to remove for *any crime* which in his judgment is sufficiently grave. He can remove only for the crimes *expressly stated* in law, and only by a canonical trial. In the dismissal of removable rectors, on the other hand, the bishop has a great deal of *discretionary power:* that is, he is not tied down to the causes or crimes and the many formalities of trial prescribed in canon law for the dismissal of

[163] The words of Pope Gregory are: "Satis perversum et contra ecclesiasticam probatur esse censuram ut . . . suis quis privetur officiis, quem sua *culpa* vel *facinus*, ab officii quo fungitur gradu non dejicit." Can. *Satis* 7, d. 56, et glossa in h. c. Again, Pope Gregory decrees: "Quam (ecclesiam) si juste adeptus fuerit (presbyter), hanc non nisi *gravi culpa* . . . amittat." Can. *Inventum* 38, c. 16, q. 7. Glossa, ib. v. *nisi gravi*. See, especially, Glossa in cap. Unic. de capell. Monach. in 6°, v. *causa rationabili*.

[164] Reg. xxiii. de Reg. Jur. in 6°.

parish priests proper, but he is free, or has discretionary power, to impose dismissal (*a*) only for crimes indeed, but yet for crimes which are not expressly stated in law, and which are, in the estimation of good men, sufficiently grave to make the rector unworthy of his position; (*b*) and by a trial which is summary and therefore less formal than that required for the dismissal of an irremovable rector.

The form of trial which is at present necessary in the United States is, in dioceses where the curia is established, that which is outlined in the Instruction of the S. C. de P. F. of 1884; and in dioceses where by Papal dispensation the curia is not yet constituted, that which is laid down in the Instruction of July 20, 1878, as modified in article xii. of the Instruction of 1884.

This principle is fully and unequivocally recognized already by the Second Plenary Council of Baltimore, and by the Instruction of the S. C. de P. F. of July 20, 1878. For both the Second Plenary Council and the Instruction, while stating that all our rectors were *amovibiles* (C. Pl. Balt. II., n. 108, 125; Instr. cit. Ad Dubia, § 1), yet enacted at the same time that they could not be dismissed from their missions save for crime and by trial. (C. Pl. Balt. II., n. 77; Instr. cit. Resp. Ad Dubia, § I.)"[168]

419. The above rule, that privation of mission can be inflicted upon a removable rector, only for crime, is the ordinary rule. In other words, dismissal (*privatio*) is generally imposable only as a punishment for crimes committed by the incumbent. We say, *generally;* for there are certain cases, indicated in law, where very grave and urgent causes render it necessary to inflict privation upon a rector, even though he is, technically speaking, guilty of no crime. For in human affairs it is not always possible to exempt innocent persons from punishment. Grave reasons of public interest

[168] This Instruction, and the answer *Ad Dubia* are given in the second volume, p. 415 sq.

will and must, at times, prevail over the rights and privileges of individuals, just as the welfare of a whole community must be preferred to the welfare of this or that member of the community.

It is on this principle that even irremovable rectors, who, though free of crime, are permanently and notoriously disabled, *v.g.*, by chronic disease, from administering their parish or mission, may be deprived of their mission if they refuse to resign, and if, moreover, the circumstances are such that no assistant priest can be assigned them.[166] Here a punishment—namely, privation—is indeed inflicted without crime, yet not without grave and urgent cause. This is in harmony with the above maxim of law: "Sine culpa, *nisi subsit causa*, non est aliquis puniendus."

420. In these cases where privation is inflicted, not indeed for crime, but for other sufficient causes of public interest, it is not required that the trial prescribed by the Instruction *Cum Magnopere* (or *Quamvis* of 1878, where it still obtains) should precede the privation; but it is necessary and sufficient that a very careful and accurate investigation should be made into the causes calling for the privation. This investigation should be put on record, so that, upon appeal being made by the rector removed, it may appear *ex actis* that there is legitimate cause for the privation. Finally, our removable rectors can appeal or have recourse to the superior, that is, to the metropolitan, and ultimately the Holy See, against the decree or sentence of dismissal. This is expressly set forth in the Second Plenary Council of Baltimore, n. 77, and in the Instructions *Quamvis* of 1878 and *Cum magnopere* of 1884. Has this appeal or recourse a suspensive or only a devolutive effect? We shall give the answer in the third volume of this work, under the head of Dismissals.

[166] Conc. Pl. Balt. III., n. 38, vii.

# CHAPTER X.

## OF RESTRICTIONS UPON JURISDICTION—EXEMPTIONS OF RELIGIOUS COMMUNITIES FROM THE JURISDICTION OF BISHOPS AND PARISH PRIESTS ALSO IN THE U. S.

421. The *jurisdictio* of bishops, parish priests, etc., may be *suspended* by censures and irregularities. Again, it may be *restricted* either as to persons or matters: as to persons, it is limited by exemptions; as to matters, by reservations.[1] At present we shall merely dwell upon exemptions. Exemption is a *privilege*,[2] *by which a person or a place is withdrawn from the jurisdiction of the bishop and placed directly under the jurisdiction of the Pope.*[3] Various Catholic writers,[4] hostile to the Holy See, have written in opposition to the exemptions granted to religious communities. Febronius, who followed in the wake of these authors, asserted that exemptions, as vested in religious communities, were, 1, prejudicial to the authority of bishops; 2, injurious to the observance of monastic discipline: 3, nay, even detrimental to the interests of secular rulers. The defenders of Gallicanism, as a matter of course, chimed in with this outcry against exemptions.[5]

422. On the other hand, good Catholic writers—*v.g.*, St. Francis of Sales, St. Bernard—complain also, not indeed of exemptions themselves,[6] but of the various abuses occasioned by them. It were, in fact, vain to deny that no small num-

[1] Craiss., n. 567.
[2] Ferraris, V. Regulares, art. ii., n. 1.
[3] Cfr. Phillips, Lehrb., § 149, p. 292.
[4] Ap. Bouix, De Jure Regular., vol. ii., p. 86. Parisiis, 1867.
[5] Bouix, l. c., p. 86.
[6] Craiss., n. 569, 570, 571.

ber of evils were attendant on them; they had become too numerous and extensive, and were consequently modified and reduced in number by the Council of Trent[7] and by various Pontiffs.[8] Having premised this, we establish the following proposition: *Exemptions, apart from abuses, are lawful, nay, very useful and just.*

423.—I. *Exemptions are Lawful.*—This is proved, 1, from their antiquity.[9] Thus, in the year 390, St. Epiphanius, Bishop of Salamina, having come to Jerusalem on a pilgrimage, and remaining at a certain monastery in Bethlehem, conferred the order of priesthood upon Paulinus, one of the monks. When John, Bishop of Jerusalem, complained of this act as an infringement of his authority, St. Epiphanius replied: "Nihil tibi injuriae fecimus; in *monasterio* ordinavimus, et non *in paroecia* [dioecesi],[10] *quae tibi subdita sit.*" Hence, even at this early period, the monastery in question was exempted from the authority of the ordinary. In the Roman council held in the year 601, St. Gregory the Great exempted monasteries in general from the jurisdiction of bishops. The decree reads: "Quia in pluribus monasteriis multa a praesulibus praejudicia monachos pertulisse cognoscimus, prohibemus ut nullus episcoporum ultra praesumat de rebus monasteriorum minuere; neque audeat quamlibet potestatem habere imperandi, nec aliquam ordinationem faciendi, nisi ab abbate loci fuerit rogatus."[11] 2. Exemptions, secondly, are lawful, because they emanate from the legitimate exercise of competent authority vested in the Roman Pontiffs. No Catholic can doubt for a moment that Popes *can* exempt certain persons from the jurisdiction of inferior prelates.[12]

424.—II. *Exemptions, moreover, are Useful and Just.*—For religious communities, as at present constituted, are, as a

[7] Sess. xxiv., cap. xi., d. R., et alibi.
[8] Soglia, vol. ii., p. 55.
[9] Craiss., n. 572.
[10] Bouix, De Jure Regular., vol. ii., pp. 99, 100.
[11] Ib.
[12] Craiss., n. 573; cfr. Soglia, vol. i., p. 243.

rule, governed each by a general[13] superior. By means of this unity of government the various houses of a congregation, though spread through different dioceses and governed by local or provincial superiors, ultimately depend upon a general chapter or superior; the community is thus prevented from being divided into innumerable, insignificant houses independent one of another. That this form of government is beneficial to religious congregations, and conducive to the better observance of the monastic discipline, no one can doubt. Now, this unity of government could not obtain in case religious communities were subject to bishops; for each bishop would become, so to say, the supreme and independent superior of the communities of his diocese.

There is some doubt as to the origin of exemptions. According to some writers, they are coeval with monasticism itself;[14] according to others, they are of later date,[15] and were not possessed by any religious community in the beginning[16] of monasticism.[17]

☞ 425. *What religious communities possess at present the privilege of exemption from the jurisdiction of bishops?*—All regular orders whatever enjoy, by the common law of the Church, the privilege in question. For their houses or monasteries, though situate in the diocese, are nevertheless considered, by fiction of law, *as a separate territory.* Thus, Pope Leo XIII., in his celebrated constitution, *Romanos Pontifices* (§ *Ad regularium*), issued in 1881 for England and Scotland, and extended to the United States, at the request of the *Third Plenary Council of Baltimore* (Conc. Pl. Balt. III., p. cv, and n. 86), says: "Earum (religiosarum sodalitatum)

[13] Bouix, l. c., pp. 110, 113.

[14] Ib., p 103 seq.

[15] Thomassinus, Vetus et Nova Eccl. Disciplina, pars. i., lib. iii., cap. xxvi., p. 696 seq. Lucae, 1728.

[16] Bouvier. De Decal., cap. ii., p. 267. vol. v., edit. 1844.

[17] Cfr. Reiff., lib. i., tit. xxxi., n. 107.

domus habitae fuerint juris fictione quasi *territoria quaedam ab ipsis dioecesibus avulsa*." (Cf. Tit. de privileg. et excess. priv., l. v., t. 33; in 6, l. v., t. 7; in Clem., l. v., t. 7; Phillips, K. R., vol. vii., p. 903; Sabetti, comp. n. 620.)

We say, *all regular orders whatever;* now, by regular orders are meant only those which have *solemn vows.* Consequently, religious congregations of priests which have but *simple vows*, even though *perpetual*, or have no vows at all, do not possess the privilege in question by the *jus commune;* De Angelis, Prael., l. 3, t. 36, n. 4; yet by *special concession* of the Holy See, religious institutes which have no solemn vows may obtain, in fact, many of them, *v.g.*, the Passionists, Redemptorists, have obtained exemption from episcopal jurisdiction, just like regulars with solemn vows. According to the more common opinion, this privilege is not acquired by the *communicatio privilegiorum*, but must always be conferred directly by the Holy See in each individual case (S. C. EE. et RR., Sept. 16, 1864; Lucidi, De Visit., vol. ii., pp. 107, 110; Sanguineti, Jur. eccl. Inst., n. 393, 395, Romae, 1884).

426. *Nature and Extent of the Exemptions of Religious Communities from the Authority of Bishops.*—Religious at the present day are not, by virtue of their exemptions, released from *all* subjection to episcopal jurisdiction.[18] For exemptions, as was seen, were considerably diminished by the *jus commune* previous to the Council of Trent, by the Council of Trent itself, and subsequently by various Pontifical enactments. Hence, bishops are now vested, in various cases, with *jurisdictio ordinaria* or *delegata* over religious orders.[19] Thus, regulars, notwithstanding their exemptions, if they live *out of their monastery*,[20] even though it is with the permission of their superior, and commit offences or crimes

[18] Craiss., n. 576, 577. [19] Ferraris, V. Regulares, art. ii., n. 2, 3.

[20] However, those religious are not regarded as living out of their monastery who are out of it for two or three months for the purpose of preaching, giving retreats, or for recreation, and the like. (Craiss., n. 904.)

while thus living out of the monastery, can be punished by the ordinary of the place as delegate of the Apostolic See. (Conc. Trid., sess. vi., c. 3, De Ref.) Nay, all regulars whatever, who, *residing in their monastery*, have, out of that enclosure, committed offences in so *notorious a manner* as to be a scandal to the people, shall, at the instance of the bishop, be severely punished by their own superiors, within such time as the bishop shall appoint, and the superior shall certify to the bishop that the punishment has been inflicted; otherwise the delinquents may be punished by the bishop himself. (Conc. Trid., sess. xxv., c. 14, De Regular.; Soglia-Vecchiotti, l. ii., cap. 9; Sanguineti, n. 395, a, b.)

Again, all regulars who exercise the *cura animarum* are subject to the jurisdiction and correction of the bishop in all those matters which relate to the care of souls or the duties of a rector and the administration of the sacraments. (Bened. XIV., Const. *Firmandis*, Nov. 6, 1744.) For several other cases where regulars, notwithstanding their exemption, fall under the jurisdiction of the bishop, see Soglia-Vecchiotti, l. ii., cap. 9.

427. The chief cases in which religious communities do not fall under the authority of bishops[21] are thus enumerated by Cardinal Soglia:[22] "In reliquis autem quae ad disciplinam domesticam, observantiam regularum et votorum, modum vivendi, officia, promotiones, coercitiones religiosorum, pertinent, nequit episcopus sese immiscere."

☞ 428. *Are religious communities in the United States exempted from the authority of bishops?* They are, so far as exempt orders of men are concerned; *v.g.*, the Jesuits, Dominicans, Benedictines, Capuchins, Carthusians.[23] This is beyond doubt at present. For the Const. *Romanos Pontifices* of Pope Leo XIII., which guarantees the privilege of exemp-

[21] Cfr. Phillips, Kirchenr., vol. vii., pp. 903–1027. [22] Vol. ii., p. 57

[23] Cfr. Kenrick, Mor., tract. iv.; app. ii., n. 1–10; tract. viii., n. 50 seq.

tion to regular orders in England and Scotland, was, at the request of the *Third Plenary Council of Baltimore*, extended to this country by decree of the S. C. de Prop. Fide, dated Sept. 25, 1885 (see decree in Conc. Pl. Balt. III., p. cv). Besides, it was already clearly implied in the following words of the Second Plenary Council of Baltimore: "Dum ab Episcopis serventur regularium exemptiones in iis quæ ad regimen internum communitatis spectant!" [14]

Nay, regular orders of men in the United States, England, Scotland, and other missionary countries enjoy this privilege of exemption from the jurisdiction of the bishop to a greater extent than in non-missionary countries where the general law of the Church obtains. For, by the common law of the Church, all those small convents or houses of regulars where there are not at least *six monks*, namely, four priests and two lay brothers, remain entirely subject to the jurisdiction of the bishop of the place where they are situate, as apostolic delegate, and that not only in matters pertaining to ecclesitical discipline, but also in those relating to the monastic discipline. (Innoc. X., const. *Instaurandae*, Oct. 15, 1652; const. *Ut in parvis*, Feb. 10, 1654; Leo XIII., const. *Romanos Pontifices*, May 8, 1881; Ferraris, v. *Conventus*, Art. I., n. 5 sq.; Lucidi, De Visit., vol. ii., p. 32 sq.)

Now the S. C. de Prop. Fide has frequently declared that this general law requiring as a condition of exemption that at least six regulars shall live in the same house is not to be understood as applying to regulars who live and exercise the sacred ministry *in missionary countries*. (Leo XIII., const. *Romanos Pontifices* cit.) Consequently our Holy Father Pope Leo XIII., now gloriously reigning, in his celebrated constitution *Romanos Pontifices* (§ *Quamobrem*), first issued for England and Scotland, and now extended to the United States, as was seen, declares that regulars in the

[14] Conc. Pl. Balt. II., n. 413; cfr. ib. app. 21, p. 322.

aforesaid missionary countries, who live in houses or residences attached to missions or congregations, *even though but three, or two, or one live in such houses*, are exempt from the jurisdiction of bishops in the same manner as regulars living in monasteries or convents having more than six regulars. For, as the illustrious Pontiff well says, in view of and as a reward for their noble missionary labors, they are regarded by fiction of law as living *intra claustra*, although as a matter of fact they live *extra claustra*.

Of course these regulars living in missionary residences, with us, as elsewhere, while enjoying the privilege of exemption, remain subject to the jurisdiction of the bishop, like all other regulars, in all that pertains to the care of souls and the administration of the sacraments, and in those other matters enumerated above (n. 426), as Pope Leo XIII. expressly declares in the above constitution. Consequently they must attend diocesan conferences and synods. In regard to their right of appealing against statutes of diocesan synods, the right of the bishop to divide their missions or quasi parishes, see the const. *Romanos Pontifices* of Leo XIII., given in its entirety in the *Third Plenary Council* of Baltimore, p. 212 sq. These regulars are also bound to give the bishop annually an account of their administration of all the property, real and personal, given them *intuitu missionis*, but not of the property belonging to them *qua regulares*. (Leo XIII., const. cit.)

☞ What has been said concerning the exemption of *regulars* proper in the United States applies, of course, also to those religious congregations or institutes with us that have indeed but simple vows, but yet are exempted by special concession of the Holy See, *v.g.*, the Redemptorists. The *Third Plenary Council of Baltimore* (n. 91) wisely ordains that whenever any controversy should arise between bishops and exempted religious communities respecting exemptions,

the bishop should refer the matter to the Cardinal Prefect of the Propaganda.

☞ *Q.* In what manner are religious communities, male or female, in the United States, who have but simple vows, or no vows at all, and who do not enjoy, by special concession, the privilege of exemption, subject to the jurisdiction of the ordinary?

*A.* We premise: 1. We must distinguish between diocesan and non-diocesan institutes. By *non-diocesan* institutes are meant those whose institute and constitutions or rules are approved by the Holy See, and who are governed by a superior or superioress-general. By *diocesan* institutes, on the other hand, we understand those whose institute and constitutions are approved only by the ordinary. 2. We must also distinguish between the power of domestic government (*potestas dominativa*) and the power of jurisdiction (*potestas jurisdictionis*). The former relates to the internal or domestic government of the religious institute, and empowers the superior or superioress to see that the rules and constitutions of the institute are observed. The latter, *i.e.*, *potestas jurisdictionis*, refers to the power of the keys, and consists in the power of binding and loosing, inflicting ecclesiastical censures, and the like.[14] 3. We must also distinguish between religious congregations of males and those of females. For, as we shall see, institutes of men are usually granted larger powers of government than those of women.

☞ We now answer: I. *Non-diocesan institutes*, whether of men or women, are exempted from the authority of the Ordinary, so far as concerns the *domestic government*, but not so far as regards the power of jurisdiction proper. In other words, they do not depend upon the bishop so far as concerns their constitutions as approved by the Holy See. For, as De Angelis (l. iii., t. 36, n. 4) says, once the Holy See has

[14] See our article on *Religious Communities* in the *Am. Cath. Quart. Review* for Apr., 1878, p. 250.

sanctioned anything or taken it in hand, inferior ordinaries can no longer interfere with or change it. Now, as a matter of fact, the rules of these institutes, especially of men, place the entire domestic authority in the hands, not of the bishop, but of their own superior or superioress. But the Holy See, in approving these institutes, generally reserves the *potestas jurisdictionis* over them to the bishop. While, however, these institutes, male or female, are exempt from the bishop in matters of domestic government, yet the Holy See, as a rule, vests the *potestas dominativa* more largely in institutes of *men* than in those of *women*. Thus, as a rule, these institutes of men, as approved by the Holy See, are independent of the ordinary, not only in regard to the internal government of the house, but also in regard to the election of their superiors, the admission or dismission of members of the institutes, the administration of their property, their receipts and expenses: whereas, by the general law of the Church, all religious communities of women,[16] even though they have solemn vows and are exempted; and *a fortiori*, therefore, those which have but simple vows and are not exempt, (*a*) must give the ordinary of the place annually a financial statement of their receipts and expenses, (*b*) and allow the bishop to be present and preside at the election of the superioress,[17] (*c*) and to examine candidates before their admission and profession. (Conc. Trid., sess. xxv., c. 17, De Reg.) This is proper. For women are generally less capable of transacting business than men. The *Third Plenary Council of Baltimore* (n. 92) provides that when differences arise between bishops and these institutes, the bishop shall have recourse to the Cardinal Prefect of the Propaganda.

☞ II. *Diocesan institutes* depend entirely upon the ordi-

[16] Craisson, Des Com. Relig., n. 184 sq.; Paris, 1869.

[17] Gregor. XV., Const. *Inscrutabili*, § 5; Ferr., V. Regulares, art. ii., n. 5; De Angelis, l. iii., t. 36, n. 4.

nary, even though they follow the rule of an order approved by the Holy See. Hence they are not exempt from the bishop, even in matters of domestic government.[28] If these institutes wish to found in other dioceses filial houses or branches which are to remain subject to the mother-house, an agreement should first be made between the bishop of the diocese where the mother-house is situate, and the bishop of the place where the new house is to be opened, and the superior or superioress of the mother-house, by virtue of which (agreement) the branch houses shall remain subject to the superior or superioress of the mother-house, so far as regards their internal or domestic *régime*, but also entirely subject to the *potestas jurisdictionis* of the ordinary of the place where they are. Hence these branch houses are exempted from the *potestas dominativa*, but not from the *potestas jurisdictionis* of the bishop of the diocese where they are located.[29] As a matter of fact, the greater number of religious communities of *women* with us are diocesan institutes. Moreover, they have, as a rule,[30] but simple vows;[31] they are not, in consequence, true religious, at least strictly speaking, of those orders whose rules they follow. Hence they fall under the jurisdiction of the ordinary[32] in the sense just explained.[33] This applies to Benedictine and Dominican sisters and the like, and also to sisters of charity and similar congregations.

☞ The authority of bishops over the purely *diocesan* institutes in question is thus set forth in the *Third Plenary Council of Baltimore*, n. 93: "Instituta vero *dioecesana* quorum constitutiones ab Ordinario tantum approbatae sunt, dependent ab Ordinario, cujus est ea regere, corrigere ac reformare, *salvo semper fine ad quem hujusmodi instituta sunt in sua*

[28] Conc. Pl. Balt. III., n. 93.
[29] Conc. Pl. Balt. III., n. 93.
[30] Decr. S. C. Ep., 3 Sept., 1864, ad Archiep. Balt.
[31] Conc. Pl. Balt. II., n. 419, 420.
[32] Craiss., Man., n 609.
[33] Bouix, De Jur. Reg., vol. ii., p. 132.

*fundatione ordinata, et ad quem constitutionibus ab Ordinario primitus approbatis diriguntur.*"

429. *How Religious Communities are Exempted from the Authority of Parish Priests in whose Parishes Monasteries or Convents are situate.—Rule I.*—In whatever matters religious communities are exempt from the jurisdiction of bishops, they are, *à fortiori*, free from the authority of parish priests.[34]

430. *Rule II.*—By parochial rights (*jura parochialia*), as vested, at present, in *canonical parish priests*, we mean chiefly the right of administering baptism, Extreme Unction, and the Viaticum;[35] the faithful, moreover, are obliged to satisfy the precept of paschal communion in their parish church, and to contract marriage *coram proprio parocho.*[36] Regulars, therefore, cannot administer any of these sacraments to the laity without the permission of the parish priest or bishop.[37] Several particulars, however, are to be noticed in regard to this point. 1. Regulars approved for the confessions of seculars can hear (*a*) lay people also during the paschal season;[38] (*b*) the sick at any time; but, having done so, they must inform, at least by leaving a note with the sick person, the parish priest of the fact, so as to enable him to administer the Viaticum and Extreme Unction. 2. They may,[39] in like manner, distribute Holy Communion in their churches, except on Easter day itself. 3. Formerly the faithful were bound to hear Mass on Sundays and holidays *in the parish church.*[40] This obligation has lapsed. Bishops and pastors, at present, may indeed *exhort*, but cannot *compel*, the faithful to attend the parochial Mass.[41]

[34] Bouvier, Tract. de Decalogo, vol. v., p. 269. Paris, 1844.
[35] Ferraris, V. Parochia, n. 22. [36] Ib.
[37] Bouix, De Paroch., p. 442 seq.
[38] Cfr. Bened. XIV., De Syn., lib. ix., c. xvi., n. 3.
[39] Cfr. Bouix, l. c., p. 448.
[40] Cfr. Bouix, De Jur. Regular., vol. ii., p. 196.
[41] Cfr. Ferraris, V. Parochia, n. 23.

☞ 431. *Rule III.*—The second rule, as just explained, refers, among other things, to the *administration* of certain sacraments on the part of exempted regulars. Rule III., now under consideration, relates chiefly to the *reception* of certain sacraments by religious. Religious communities, both male and female, which enjoy the *privilegium exemptionis*, and that whether they have solemn or only simple vows, are by that very fact also exempted from the authority of the parish priest, in whose parish the monastery or convent is situate. Consequently, these religious, if they are *nuns or sisters*, can receive the above sacraments, namely, the paschal communion, the Viaticum, and Extreme Unction from their own chaplain. For the chaplain of exempted nuns or sisters is vested with the rights and duties of a parish priest, in regard to the sisters, to whom he is chaplain. (Ferraris, v. Capellanus Monialium, add. ex al. Man., n. 1.)

☞ We say, *exempted nuns;* for, sisters or nuns, who are not exempted—and no sisters in the United States are exempted—are subject, according to the *general law* of the Church, to the parish priest of the place where the convent is located, and therefore must receive the above sacraments from him. However, where the contrary custom prevails, and where this custom to the contrary is lawfully prescribed, the bishop may appoint even for nuns or sisters who are not exempted, chaplains, who shall have the rights and duties of parish priests in relation to the nuns in question; and where the bishop does so, the chaplain and not the parish priest has the right to administer the above sacraments to the sisters. (Ferraris, l. c., n. 2–5.)

432. ☞ What has just been said of sisters applies, "à fortiori," to religious communities of *men*. In other words, exempted regulars, even though they have but simple vows, are exempted from authority of the parish priests. Consequently they receive the above sacraments, not from the parish priest, but from priests of their own order. This

applies not only to professed religious, but also to novices and postulants, who are also exempt from the authority of parish priests; nay, by the Council of Trent,[42] even servants of monasteries may receive paschal communion, the Viaticum, and Extreme Unction in the community, church, or chapel, provided they live[43] in the monastery; for if they merely work there during the day, going out at night, or if they live in houses[44] situate indeed *intra ambitum monasterii*, but detached from it, they must receive the above sacraments from the parish priest. Can students at colleges in charge of regulars, and girls in academies conducted by nuns, receive the paschal communion, Extreme Unction, and the Viaticum from the chaplain of the respective institution, or are they bound to receive these sacraments from the parish priest of the place? The question[45] is controverted. It is certain, however, that the bishop may, by special enactment,[46] exempt these youths and girls from the obligation of receiving these sacraments from the parish priest of the place where the college or academy is situate; in fact, bishops generally do so at present, not only with regard to[47] boys and girls educated respectively by regulars and nuns, strictly speaking, but also with regard to students brought up in colleges conducted by secular priests, and girls educated by nuns or sisters having but simple vows, and not exempted.

[42] Sess. xxiv., cap. xi., d. R.
[43] Craiss., n. 611.
[44] Bouix, l. c., p. 200.
[45] Ib., l. c., pp. 204–209.
[46] Craiss., n. 612.
[47] Bouix, l. c., p. 209.

# CHAPTER XII.

## ON THE RIGHTS AND DUTIES OF THOSE WHO ARE VESTED WITH ECCLESIASTICAL JURISDICTION.

433. Those who have *jurisdictio ecclesiastica* are by that very fact entitled to certain rights and prerogatives—viz., to reverence and obedience from those under their charge. Now, these rights have corresponding duties; of these some are *positive*, consisting of certain actions to be performed—*v.g.*, the duty of residence; others *negative*, having reference to the avoiding of excesses.[1] At present we shall only speak, 1, of the rights of ecclesiastical superiors in general; 2, of their negative duties—*i.e.*, of the excesses to be avoided by them in the exercise of their authority.

### ART. I.

### *Rights of Ecclesiastical Superiors in General* (*De Obedientia et Reverentia*).

434. The right to obedience and[2] reverence on the part of subordinates may be said to constitute the chief prerogative of ecclesiastical superiors. Ecclesiastical obedience (*obedientia canonica*) in general consists in three things:[3]

435.—1. In this: that an inferior should carry out the directions of his superiors, and, therefore,[4] submit to their authority in matters pertaining to their jurisdiction. This

[1] Craiss., n. 621. [2] Ib., n. 622. [3] Reiff., lib. i., tit. xxxiii., n. 15.
[4] Phillips, Kirchenr., vol. ii., p. 174. Ratisbon, 1857.

every priest promises in his ordination.[5] Those, moreover, who are canonically appointed parish priests[6] must also take the oath of canonical obedience. Now, we ask: What is, especially in the United States, the force of the promise of obedience given by every priest in his ordination Chiefly this: 1, priests are *bound* not to give up their missions or congregations[7] without the bishop's permission; 2, they are *exhorted* "ut non detrectent vacare cuilibet missioni ab episcopo designatae."[8] Obedience is due the superior even when it is doubtful whether his orders are just; because the presumption is in his favor. But who is to be obeyed in a conflict of authorities—*i.e.*, when two ecclesiastical superiors, in matters falling under their jurisdiction, give contrary orders? The general rule is that obedience[9] is due to the higher superior. Nor is this opposed to the principle that an ecclesiastic must obey his bishop rather than the metropolitan;[10] for, in the conflict of authority, it is taken for granted that each of the superiors in question has a right to command. Now, the metropolitan has no power over the ecclesiastics of suffragans, except during the visitation and on appeal.[11] On the same principle, a monk must obey his prelate rather than the bishop; in like manner, when the bishop orders something which is contrary to the *jus commune* of the Church, the law is to be obeyed, and not the bishop.[12]

436.—2. Obedience consists, secondly, in the submission of the inferior to the *judicial* authority (*jurisdictio contentiosa*) of his superiors.[13]

[5] Craiss., n. 622; cfr. Pontificale Rom., pars. i., p. 77. Mechlin., 1862.

[6] Phillips, l. c., p. 200.

[7] Cfr. Instructio S. C. Prop., 28 Junii, 1830, ap. Conc. Balt., pp. 64, 65.

[8] This whole matter is well explained in the *Instructio* of the Propaganda on the Decrees of the First Prov. C. of Baltimore.

[9] Reiff., l. c., n. 22. [10] Phillips, l. c., p. 181. [11] Craiss., n. 623.

[12] Ib., n. 622. [13] Reiff., l. c., n 20.

437.—3. Obedience consists, thirdly, in the *reverence* due superiors.[14] By *reverentia* we mean the external marks of respect which inferiors should show their[15] superiors—*v.g.*, by rising in their presence, giving them the first place, and the like. Of this *reverentia* we shall speak in the following article.

## Art. II.

### *Canonical Precedence—Majoritas and Praecedentia.*

438. The respect (*reverentia*) due superiors is shown chiefly by the precedence which is given them, especially in processions, funerals, synods, signing documents, and the like.[16]

439. *Rules of Precedence.*—Of these some are general, others special. I. *General Rules of Precedence.*—Precedence in general is regulated[17] by five causes: 1. *Ex praerogativa ordinis;* thus, a deacon, even though younger as to ordination, ranks higher[18] than a subdeacon; a priest higher than a deacon. 2. *Praerogativa consecrationis;* thus, a consecrated[19] bishop precedes a bishop elect. 3. *Ratione jurisdictionis et dignitatis;* hence,[20] an archbishop, even though younger as to consecration, takes precedence of a bishop. 4. *Ratione antiquitatis;* thus, precedence among bishops[21] themselves is regulated by the time of their consecration; among priests, by the time of their ordination. This rule applies only to ecclesiastics in the same *ordo;* it admits of exceptions. 5. *Praerogativa ordinantis;* thus, an ecclesiastic ordained by the Pope[22] precedes others of the same *ordo* and *dignitas* with himself, even though he was ordained after them.

[14] Reiff., l. c., n. 16.
[15] Cfr. Phillips, l. c., p. 174
[16] Phillips, l. c., p. 155.
[17] Reiff., l. c., n. 3.
[18] Ib., n. 4.
[19] Ib., n. 5
[20] Craiss., n. 626.
[21] Phillips, l. c., pp. 158–162.
[22] Phillips, l. c., p. 159.

440. To these five rules, generally given by canonists, we may add: 1. "Ex privilegio insignium," mitred abbots[23] take precedence over others not entitled to wear the mitre. 2. In sacred functions and public[24] prayers those who are in sacred vestments precede others (even though they be superior in rank) who are in their ordinary dress. 3. In his own dioces a bishop takes precedence of other bishops, nay, even of archbishops; not, however, of his metropolitan.[25] As a matter of courtesy, however, the bishop of the diocese may give precedence to strange bishops who are in his diocese. 4. "Praerogativa loci,"[26] by which the Archbishop of Baltimore takes precedence of all other archbishops in the United States in councils[27] and the like.

441.—II. *Special Rules of Precedence.*—1. Vicars-general, as a rule, should have the first place after the bishop, and take precedence of canons and dignitaries, both in the presence and absence[28] of the bishop, provided, however, they are present in their official capacity—*i.e.*, as vicars-general.[29] In the United States also vicars-general take[30] precedence of all other priests or dignitaries of the diocese. The vicar-general of the metropolitan[31] takes precedence even of the bishops of the province. Administrators of dioceses, *sede vacante*, in this country, being quasi-capitular vicars, precede in rank all[32] the other clergymen of the respective dioceses. 2. Next in rank are rural deans, then come pastors, and, finally,[33] assistant priests and other ecclesiastics. 3. Regulars come last. and should always, even in their own[34] churches, give precedence to the secular clergy. Precedence among priests in the United States is regulated by

[23] Craiss., n. 626.
[24] Ib., n. 627.
[25] Phillips, Lehrb., p. 290.
[26] Cfr. Conc. Pl. Balt. II., p. 343.
[27] Infra, n. 528.
[28] Bened. XIV., De Syn., lib. iii., cap. x, n. 1, 2.
[29] Ferraris, V. Vicar.-gen. Novae Addit., n. 2.
[30] Conc. Pl. Balt. II., n 72
[31] Phillips, Kirchenr., vol. ii., p. 167.
[32] Cfr. Craiss., n. 630.
[33] Phillips, l c., p. 167.
[34] Ferraris, V. Praecedentia, n. 9

the time of their ordination or of their admission into the diocese.

## Art. III.

### *Of Excesses Committed by Bishops or Prelates in the Exercise of their Authority.—Of Appeals.*

442. *Chief Abuses of Jurisdiction.*—By abuses of jurisdiction we mean, in general, the improper use of it. At present we shall speak only of those abuses of power that violate, at least to some extent, the rights of others.[35] A superior may abuse his authority chiefly: 1. By usurping jurisdiction over persons not under his authority—*v.g.*, over the subjects of[36] another bishop. 2. By extending his power *ad materiam alienam*—*v.g.*, if a parish priest should attempt to exercise the *jurisdictio fori externi* even over his own[37] parishioners. 3. By bringing before his tribunal, in cases not allowed by canon law, a cause which, in the first instance, should have been tried by an inferior judge. 4. By unjustly and without cause taking away or restricting the rights of subordinates. 5. By imposing upon inferiors a new burden without sufficient reasons—*v.g.*, by not observing the canonical mode of procedure in inflicting[38] censures, in trials, and the like. 6. By appointing unworthy persons[39] to parishes. 7. By unduly restricting the privileges of exempt persons, especially of regulars.[40]

443. *Canonical Remedies by which Inferiors may protect themselves against Abuses of Authority committed by Prelates.*—These remedies are chiefly: 1. *Respectful remonstrance* (*humilis supplicatio*) addressed to the superior himself who is guilty[41] of excesses. Thus, the Roman laws allowed of recourse "a principe male informato ad principem melius in

[35] Craiss., n. 643. [36] Ib. [37] Ib. [38] Ib. [39] Reiff.. lib. v., tit. xxxi., n.
[40] Ib., n. 6, 10. [41] Craiss., n. 644.

formatum," or, as the proverb has it, "ab Alexandro dormiente ad vigilantem." St. Bernard tells us that the "apostolica sedes hoc habet praecipuum ut non pigeat retractare quod a se forte deprehenderit fraude elicitum."[42] 2. *Appeals* (*appellatio*).—The right of appeal—*i.e.*, of removing a cause from an inferior to a superior judge or court for re-examination—is expressly granted by innumerable canons,[43] and is according to canonists,[44] founded in the law of nature. Appeals are of two kinds, judicial and extra-judicial, according as they are interposed against judicial or extra-judicial grievances. Judicial and extra-judicial appeals have this in common, that both alike always produce a *devolutive effect* (*infra*, vol. ii., n. 1242). But judicial appeals generally produce, besides a devolutive, also a *suspensive effect* (*infra*, vol. ii., n. 1243), while extra-judicial appeals do not always produce a suspensive effect. 3. *Recourse to the Holy See* (*recursus, supplicatio*). —In cases (*a*) where a person has *either* lost the right of appealing judicially or extra-judicially—*v.g.*, where he has failed to interpose his appeal within ten days; (*b*) *or* where he is altogether forbidden by the law to appeal even *in devolutivo*, *v.g.*, where he is suspended *ex informata conscientia* —he is allowed, as a last resort and by way of equity, to lay his case before the Supreme Pontiff for redress. The chief difference between appeals, judicial or extra-judicial on the one hand, and recourse on the other, is this: Appeals, judicial and extra-judicial, can be made to the metropolitan; recourse, to the Holy See only.

444. *Q.* In what cases can appeals be made?

*A.* Generally speaking, it is allowed to appeal, except where canon law *expressly* prohibits it, against *any gravamen*, whether judicial or extra-judicial.[45] It is even lawful to appeal against *future* or impending *extra-judicial* grievances, even though not yet threatened; also against *threatened judicial* injuries.[46] All appeals, whether judicial or extra-

[42] Epist. clxx. [43] Craiss., l. c. [44] Bouix, De Judic., vol. ii., p. 247.
[45] Reiff., lib. ii., tit. xxviii., n. 32. [46] Cfr. Bouix, l. c., p. 252.

judicial, must be made within ten days[52] from the moment sentence is[53] pronounced, when the parties are present or from the time notice is received of the sentence or grievance, when the parties are absent.[54]

445. *Cases which admit of no Appeal.*—We said above, *except where canon law expressly prohibits appeals.* Now, when are appeals expressly prohibited by canon law? Chiefly in these cases: 1. There is no appeal, but only recourse to Rome,[55] against sentences *ex informata conscientia*,[56] that is, where the bishop, extra-judicially and by virtue of the c. i. d. R., sess. xiv., C. Trid., forbids a person to receive sacred orders, or suspends him from orders already received[57] (*δ*, p. 498).

446.—2. The censures of excommunication, suspension, and interdict, when inflicted *before* the appeal is interposed, do not allow of appeals *quoad effectum suspensivum*, but only *quoad effectum devolutivum*. Now, appeals *in suspensivo* are those which cause the execution of the censure to be suspended or deferred until the superior to whom the case is appealed has given his decision. Appeals *in devolutivo* do not suspend censures pending the appeal.[58] If, however, the appeal is made *before* the censure is imposed, the effect[59] of the censure is thereby suspended. Thus, let us suppose a bishop to inflict a censure conditionally—*v.g.*, by saying that such or such a priest will be suspended unless he complies with certain injunctions; if the priest, meanwhile, appeals, and refuses to obey, the bishop cannot proceed to impose the censure, his power being suspended by the appeal.

447.—3. In causes relative to visitation and correction of morals, an appeal lies against the extra-judicial or

[52] Cfr. Bouix, pp. 281–283.
[53] Ferraris, V. Appellatio, art. vii., n. 5.
[54] Soglia, l. c., p. 525.
[55] Craiss., n. 647.
[56] Cfr. Conc. Trid., sess. xiv., cap. i., d. R.
[57] Bouix, l. c., p 252.
[58] Ib., p. 254.
[59] Ib., p. 2'5.

paternal acts and sentences, whether final or only quasi-final, of the bishop, though only "in devolutivo."[60] But if the bishop proceeds judicially, or by regular trial, or imposes, even though extra-judicially, not merely paternal corrections but regular ecclesiastical penalties, such as perpetual suspension, dismissal from parish, an appeal lies to the metropolitan, even "in suspensivo."[61] 4. An appeal against a law is inadmissible, unless the law is either, 1, unjust, as may be the case with *particular* laws, as statutes of dioceses, decrees of provincial and national councils; or, 2, ceases to bind by reason, *v.g.*, of grave inconvenience. Appeals against diocesan statutes have but an *effectum devolutivum*.[62]

448.—5. No appeal is permitted against a sentence pronounced upon a person guilty of *notorious crimes* (*in causis notoriis*), except in case[63] these crimes can be somewhat defended—*v.g.*, if a person, having publicly killed another, alleges self-defence as an excuse.[64] 6. Appeals *in devolutivo* only lie against regulations of bishops relative to the *cura animarum*, the administration of the sacraments, divine worship, and those things which are to be observed or avoided in the celebration of the[65] Mass.

449.—7. Appeals are allowed, not only in matters of greater importance (*in causis majoribus*), but also in those of little consequence (*in causis levioribus*). Hence, if a[66] bishop, whether judicially or extra-judicially, inflicts by word or action an injustice, however slight, the ecclesiastic so wronged may appeal to the metropolitan, who is bound to admit the appeal. As a rule, this appeal suspends the effect of the episcopal injunction. Bishops cannot proceed "ex informata conscientia" save in the two cases specified by the Council of Trent (sess. xiv., c. i. d. R.) 8. The

[60] Infra, n. 555. [61] Craiss., Elem., n. 325, 406.

[62] Bened. XIV., De Syn., lib. xiii., cap. v., n. 12.

[63] Bouix, l. c., p. 262. [64] Ferraris, V. Appellatio, art. iv., n. 57.

[65] Bened. XIV., Bulla, Ad militantis Ecclesiae, § 8, 9.

[66] Bouix, l. c, p. 262.

phrase, *omni appellatione remota*, sometimes used when [67] the Pope commits a case to some one, does not preclude appeals *in devolutivo*, but only *in suspensivo; à fortiori*, this clause does not prohibit remonstrances and other remedies.

450.—*Mode of Appealing.—Rule I.*—All persons, as a rule,[68] who have serious reasons for believing themselves injured have a right to appeal their case. *Rule II.*—Generally speaking, it is allowed to appeal from *any*[69] judge whatever. We say, *generally speaking;* the exceptions are: 1. No appeal lies from the sentence of the Pope even to an oecumenical council, nor from an oecumenical council; for both of these tribunals are ultimate and supreme, having no superior. Appellants to a future oecumenical council incur, *ipso facto*, excommunication, reserved, *speciali modo*, to the Holy See even[70] at present. 2. There is no appeal from the decisions of the entire College of Cardinals or of the Congregationes Romanae,[71] nor from the final judgments of the[72] Rota Romana. 3. Nor from the decision of arbitrators (*arbitri compromissarii*) freely chosen by the contending parties.[73]

451. *Rule III.*—As a rule, the appellant must interpose his appeal *in the presence*[74] of the judge "a quo appellatur"; for the judge *a quo* (appellatur) must be notified of the appeal, so that he may not proceed any farther in the case.[75]

452. *Rule IV.*—Appeals, judicial or extra-judicial, except when made to the Pope, must be made from the inferior judge to the *immediate* superior.[76] Hence appeals, judicial or extra-judicial, 1, from rural deans, or other judges subject to bishops, must be made to the bishop or his vicar-general, *sede plena;* to the capitular[77] vicar, with us administrator, *sede vacante*. 2. From the bishop or his vicar-general, and,

[67] Bouix, l. c., p. 265.
[68] Ib., p. 248.
[69] Ib., p. 267.
[70] Const. Apost. Sedis.
[71] Craiss., n. 658.
[72] Bouix, l. c., p. 268
[73] Ib.
[74] Ib.
[75] Schmalzgr. in tit. xxviii., lib. ii., n. 4[illegible].
[76] Bouix, l. c., p. 270.
[77] Ib., p. 271.

***sede vacante***, from the chapter, vicar-capitular, or administrator to the archbishop. 3. From the archbishop successively to the primate, patriarch, and Pope. 4. No appeal lies from the vicar-general to the bishop, nor from the Roman Congregations to the Pontiff. 5. Appeals from a *delegatus* must be made to the *delegans*.[78] We said above, *except when made to the Pope;* for not only bishops, but also priests and inferior[79] ecclesiastics, may appeal *directly* to the Holy See; the reason is that the Pope has concurrent jurisdiction with all inferior ordinary judges.[80] This right of appealing directly to the Holy See is thus affirmed by the Vatican Council:[81] "Declaramus eum [Rom. Pontificem] esse judicem supremum fidelium, et in omnibus causis ad examen ecclesiasticum spectantibus, ad *ipsius posse judicium recurri;* Sedis vero Apostolicae, cujus auctoritate major non est, judicium a nemine fore retractandum, neque cuiquam de ejus licere judicare judicio. Quare a recto veritatis tramite aberrant, qui affirmant, licere ab judiciis Romanorum Pontificum ad oecumenicum concilium tanquam ad auctoritatem Romano Pontifice superiorem appellare." Nay, direct appeals to the Holy See are not only lawful, but prevail over and take precedence of all other appeals to inferior tribunals. Thus, if, of the two parties to a suit, one appeals to the Sovereign Pontiff, the other to the immediate superior—*v.g.*, the metropolitan—the suit or case must be brought before the Holy See, provided the party appealing to the Pope notifies the immediate superior of his action.[82]

453. *Rule V.*—Appeals from definitive sentences, if interposed *immediately—i.e.*, when the judge is still on[83] the bench (***in continenti, stante pede***)—**may** be made *viva voce* in the words, I appeal, or the like.[84] But if these appeals are

[78] Bouix, l. c., p. 271.
[79] Soglia, vol. i., p. 252.
[80] Leurenius, Forum Eccl., tit. xxviii., lib. ii., qu. 1063.
[81] Sess. iv., c. iii., in fine.
[82] Craiss., n. 661.
[83] Bouix, De Judic., vol. ii., p. 274.
[84] Soglia, vol. ii., p. 522.

made *post intervallum*—*i.e.*, one, two, or more days after the sentence has been pronounced—they must be *in writing*. However, instead of making the appeal *viva voce*, or in writing, as just explained, the appellant may begin the journey to the superior for the sake of appealing. Thus, the voyage to Rome has, of itself, the effect of an appeal, if undertaken within ten days from the time sentence was pronounced or the grievance inflicted, and provided the *judex a quo* be notified of the proposed journey."[85] The reason why the journey to Rome has the same effect as a formal and express appeal is that *acts* express a person's intentions more strongly than *words*. Consequently Pope Innocent III. expressly decrees: "Cum sit plus ad Sedem Apostolicam facto (*i.e.*, *itinere*) provocare, quam verbo" (cap. *Dilecti filii* 52, De App., ii., 28). Whenever, therefore, the law of the Church authorizes a person to appeal, it empowers him, by that very fact, to go to Rome to prosecute his appeal.

☞ This teaching is clearly laid down in the law of the Church. Thus Pope Nicholas enacts: "Revera justus mediator (judex) non est, qui uno litigante et altero absente, amborum emergentes lites decidere non formidat. His ita praemissis, *volumus et Apostolica auctoritate monemus, ut si Presbyter. de quo agitur, post excommunicationem suam, Apostolicam Sedem adire voluerit, nullus iter ejus impedire praesumat*" (can. 12, c. iii., q. 9). Pope Innocent III. (1213) decided a celebrated case on the same principles. The case was this: A controversy had arisen between the Archbishop of Canterbury and certain monks of his diocese in regard to a chapel. The monks sent two of their number—Jo. and H.—to Rome to prosecute their appeal before the Holy See. These two monks, after they had set out for Rome, were excommunicated by the archbishop. The two monks submitted this latter act to the Pope as an additional grievance against the archbishop. Pope Innocent III. decided that the excommu-

[85] Craiss., n. 5981.

nication was null on the following ground: "Cum autem plus sit ad Sedem Apostolicam facto provocare quam verbo, et ipsis [monachis] propter dictam causam ad Romanam Sedem venientibus intelligatur ad Sedem Apostolicam provocatum; mandamus, quatenus si est ita, dictos Jo. et H. denuncietis excommunicationis vinculo non teneri" (cap. *Dilecti filii* 52, De App., ii., 28). See also Const. *Cordi nobis*, issued by Pope Innocent IV. in 1245 (cap. *Cordi nobis* 1, De App. in 6°, ii. 15).

*Rule VI.*—Letters (*libelli dimissorii*, *apostoli*, from ἀπόστολοι, *missi*) from the *judex a quo* to the *judex ad quem*, certifying to the appeal,[86] are, as a rule,[87] necessary, no matter whether the appeal is made against a judicial or extra-judicial grievance. We say, *as a rule;* for, if the *judex a quo* refuses such certificate, the appellant may nevertheless prosecute his appeal.[88]

*Rule VII.*—The time fixed by canon law within which appellants must interpose appeals, ask for the *apostoli*, prosecute and terminate their appeal, is named *dies fatales*,[89] *fatalia*. 1. We have already seen *when* appeals should be made. 2. The *apostoli* should be solicited by the appellant and granted by the *judex a quo* within thirty days. 3. One year, and for just reasons two years, are given the appellant to prosecute and terminate his appeal, from extra-judicial as well as judicial grievances.[90]

### Art. IV.

*On Appeals to the Civil Power against Abuses committed by Ecclesiastical Superiors—De appellatione tanquam ab abusu.*

454. The *appellatio ab abusu* consists in having recourse or appealing to the civil power for[91] protection against abuses committed by ecclesiastical superiors in the exercise of their jurisdiction.[92] Now, ecclesiastical superiors may abuse

[86] Bouix, l. c., p. 276. [87] Ib., p. 277. [88] Ib., p. 278 [89] Soglia, vol. ii., p. 525.
[90] Bouix, l. c., pp. 281–285. [91] Craiss., n. 666. [92] Phillips, Lehrb., p. 773.

their authority either by placing a false[94] construction upon laws of the Church, and thus giving an unjust sentence and inflicting an undeserved penalty, or by acting contrary[95] to ecclesiastical law—*v.g.*, by imposing censures without proper trial.

455. *Q.* Is it allowed to appeal to the civil power or seek redress in the civil courts against wrongs inflicted by ecclesiastical superiors?

*A.* Such appeals are, as a rule, not only unlawful, but null and void. Thus Pope Symmachus forbids "quibuslibet laicis . . . quolibet modo aliquid decernere de facultatibus ecclesiasticis."[96] The very title of this canon is: "Quaecumque a principibus . . . in ecclesiasticis rebus decreta inveniuntur, nullius auctoritatis esse noscuntur."[97] For the Church, being a perfect and supreme society, is necessarily the supreme and, therefore, sole and ultimate judge in matters pertaining to her jurisdiction—*i.e.*, in ecclesiastical and spiritual things.[98] The civil power,[99] so far from having any authority over the Church in this respect, is itself subject to her. Persons, therefore, who have reason to believe themselves in any way unjustly treated by their ecclesiastical superiors, can seek redress only *in* the Church herself—namely, by appealing to the proper ecclesiastical superior, and, in the last resort, to the Sovereign Pontiff. The Holy See is the supreme tribunal in the Church; its decisions are unappealable, as is thus stated by the Vatican Council:[100] "Docemus . . . Sedis Apostolicae judicium a nemine fore retractandum, neque cuiquam de ejus licere judicare judicio." In no case, therefore, is it allowed to appeal to civil courts from the decisions of the Holy See. But can it become lawful, under certain circumstances, to have recourse to the civil courts

[94] Phillips, Kirchenr., vol. ii., p. 572. [95] Soglia, vol. i., p. 342.
[96] Can. *Bene quidem*, 1, dist 96. [97] Cap. *Qualiter*, 17, De Judic. (lib. ii. Decr.)
[98] Cfr. Bouix, De Judic., vol. i., p. 93 seq. [99] Craiss., n. 667.
[100] Sess. iv., cap. iii.; cfr. Syllab., prop. xli.

against injuries inflicted by inferior ecclesiastical judges—*v.g.*, by bishops? Soglia[101] grants that such recourse may, at times, become lawful,[102] when, *e.g.*, the ecclesiastical judge of appeal—*v.g.*, metropolitan—is unwilling or unable to afford relief, and when, moreover, it is morally impossible to recur to the Holy See; the case, therefore, is speculative rather than practical.

☞ 456. *Q.* **Can priests in the United States have recourse to the civil courts for redress against alleged acts of injustice inflicted on them by bishops or against other ecclesiastics?**

*A.* We must distinguish between those matters or causes which are strictly ecclesiastical, and those which are temporal or mixed. By matters purely ecclesiastical (*res stricte ecclesiasticae*) are meant all questions or matters relating (*a*) to faith, (*b*) morals, (*c*) the administration of the sacraments, especially of matrimony, (*d*), the sacred functions or divine worship, (*e*), and the rights and duties annexed to ecclesiastical offices and dignities.[103] All other matters, such as those relating to debts, wills, rights of property and the like, are considered *res temporales*.[104]

We now answer: They cannot, in matters *strictly* ecclesiastical, as is evident, among other proofs, from the Instruc-

[101] L. c., p. 344.

[102] Of course, this must not be understood, as though, even in the case under consideration, it were allowed to carry the cause itself into the civil court; for canonists unanimously hold that the civil power cannot, save by concession of the Church, take *any cognizance whatever* of purely ecclesiastical matters. Hence, even in the case referred to, it is lawful to have recourse to civil tribunals only for the purpose of obtaining a new *ecclesiastical* trial or of being enabled to appeal to the higher *ecclesiastical* judge; and even this appeal can take place only where the ecclesiastical superior has notoriously abused his power, and when all other *ecclesiastical* remedies have been vainly tried. Cfr. Phillips, Kirchenr., vol. ii., pp. 571–579; Nat. Alexander, saec. iv. pars. i., pp. 23. 32, pars. ii., pp. 25–40. Paris, 1679.

[103] Bened. XIV., De Syn., l. 9, c. 9, n. 2.

[104] Ib., n. 7.

tion of the S. Congr. de Prop. Fide, Sept. 2, 1837, on the decrees of the Third Provincial Council of Baltimore.[105] We say, *in matters*, etc. It is true that according to the general law of the Church, as formerly in force, ecclesiastics were not allowed to have recourse to secular tribunals against other ecclesiastics, even in temporal matters.[106] But this general law no longer obtains, having been modified by concordats, or by custom to the contrary. Hence, as the S. C. de Prop. Fide in the above Instruction indicates, ecclesiastics or religious are no longer forbidden to bring before the civil courts *causae mixtae—i.e.*, those causes where the *personae sunt ecclesiasticae sed res de quibus controversia est, temporales aut familiares.* This holds especially, as the S. Congregation says, in the above Instruction, in non-Catholic countries, where redress can scarcely be obtained outside of civil tribunals. However, according to the declaration of the *S. Congr. S. Officii*, Jan. 23, 1886, approved by Pope Leo XIII., ecclesiastics and others must always obtain leave from the Holy See before they can have recourse to the secular court against a bishop, even though it be in temporal matters.

☞ Having seen how it is forbidden to sue bishops in secular courts, we may be permitted to digress somewhat from our subject, and to ask: Can priests and ecclesiastical persons in general sue other ecclesiastical persons, *inferior to bishops*, in secular courts? We answer: 1. They certainly cannot, in matters strictly ecclesiastical. This is manifest from what has been said above. 2. They can, in temporal matters; but before doing so, they must obtain permission from the bishop.

☞ This whole teaching as regards suing bishops and inferior ecclesiastics in secular courts is given in the following Declaration of the S. Congr. *S. Officii*, Jan. 23, 1886:

[105] See this Instruction in the *Conc. Prov. Balt., ab an.* 1829–1849, p. 140.
[106] Supra, n. 206.

"Suprema Congr. S. R. et U. J. non semel declaravit caput *cogentes* (Const. Apost. Sedis Pii IX.) non afficere nisi *legislatores et alias auctoritates* cogentes sive directe sive indirecte judices laicos ad trahendum ad suum tribunal personas ecclesiasticas praeter canonicas dispositiones. Hanc vero declarationem SS. D. N. Leo Papa XIII. probavit et confirmavit. . . . Ceterum iis in locis, in quibus fori privilegio per summos Pontifices derogatum non fuit, si in eis non datur jura sua persequi, nisi apud judices laicos, *tenentur singuli prius a proprio ipsorum Ordinario veniam petere* ut clericos in forum laicorum convenire possint; eamque Ordinarii *nunquam denegabunt*, tum maxime, cum ipsi controversiis inter partes conciliandis frustra operam dederint. *Episcopos* autem in id forum convenire *absque venia Sedis Apostolicae non licet.* Et si quis ausus fuerit trahere ad judicem seu judices laicos vel clericum sine venia Ordinarii, vel Episcopum sine venia S. Sedis, *in potestate eorundem Ordinariorum erit in eum, praesertim si fuerit clericus, animadvertere poenis et censuris ferendae sententiae* uti violatorem privilegii fori, si id expedire in Domino judicaverint."

☞ In accordance with this declaration, the S. Congr. de Prop. Fide, in a general meeting held May 17, 1886, in answer to the question "quinam modus tenendus sit cum sacerdotibus qui recurrant ad civilia tribunalia," answered as follows: "Declarat S. Congregatio *nunquam sese fore admissurum recursum vel appellationem* sacerdotum qui ad judices laicos trahere ausi fuerint *vel clericum sine venia Ordinarii, vel Episcopum sine venia Apostolicae Sedis*, sive in causa ecclesiastica sive non, nisi prius recursum ad civile tribunal interpositum deseruerint. Episcopi vero juxta declarationem capitis *cogentes* a Suprema Inquis., die 23 Januarii, 1886 editam, possunt in praedictum clericum animadvertere, poenis et censuris ferendae sententiae, maxime suspensione a divinis, servatis tamen servandis et pro gravitate causae, si id expedire in Domino judicaverint. Quod si venia conveniendi

in forma laicorum ab Ordinariis petatur, ipsi nunquam eam denegabunt tum maxime cum ipsi controversiis inter partes conciliandis frustra operam dederint."[107]

☞ Furthermore, to the above answer, the S. C. de Prop. Fide, in a general meeting held Sept. 6, 1886, replying to the question, "Quomodo agendum cum clericis, qui cedunt laicis jura sua erga alios clericos vel Episcopos, ut ipsi laici loco eorum recurrant ad Tribunal laicum," added the following declaration: "Quod volens Ecclesiasticus sua jura cedere laico in quaestione aliqua contra clericum, exposcere debet prius veniam ab Episcopo, et si de lite agatur contra Episcopum, ab Apostolica Sede. Quod nisi faciat vel obtineat, subjectus censetur praescriptionibus emanatis contra trahentes clericos vel Episcopos ad forum laicum; censetur enim agere in fraudem legis."[108]

☞ The *Third Plenary Council of Baltimore* is in full accord with this legislation. Thus it decrees (n. 84): "Districte iisdem (sacerdotibus) prohibemus, ne contra sacerdotem vel clericum *de rebus etiam temporalibus* coram judice civili litem intentent, *sine permissione scripto expressa ipsius Episcopi*. . . . In rebus vero *ecclesiasticis* . . . judicium non pertinet, nisi ad jurisdictionem ecclesiasticam."

For fuller information on this whole question see the learned testimony of Cardinal Cullen in the O'Keeffe trial, pp. 390, 391, 397. See especially Pope Benedict XIV., De Syn., l. 9, c. 9.

The *Third Plenary Council* (n. 84) further adds: "Omnino vetamus, ne contra *laicum* de pecunia pro sedium locatione vel alia de causa ecclesiae debita coram tribunali civili (sacerdotes) agant, *nisi accepta prius in scriptis episcopi licentia*."

[107] See Mgr. Zitelli, Appar. Jur. Eccl., pp. 217, 218; Romae, 1886.
[108] Apud Zitelli, Appar., p. 546.

# PART III.

## *OF PERSONS PERTAINING TO THE HIERARCHY OF JURISDICTION IN PARTICULAR—i.e., OF ECCLESIASTICS AS VESTED WITH "JURISDICTIO ECCLESIASTICA" IN PARTICULAR.*

## CHAPTER I.

### OF THE SOVEREIGN PONTIFF.

### ART. I.

### *Of the Roman Pontiff in General.*

457.—I. The Sovereign Pontiff is named Pope (*Papa*), which means father.[1] This name is at present applied to the Roman Pontiff only, and not, as formerly, to bishops, and even minor ecclesiastics.[2] The Supreme Pontiff is, *jure divino*, head of the entire Church and the centre of its unity, successor of St. Peter, vicar of Christ, father and teacher of all the faithful.[3] II. We have already spoken of the election of the Roman Pontiff, and shall here add only a few words on this point. The Pope cannot elect his successor.[4] Some Popes, it is true, pointed out those whom they thought most worthy of the Pontificate; this, however, was *commendatio*, not *electio*.[5] The Pope may establish the form to be observed in the election of the Supreme Pontiff, for no special form was determined by Christ; but he cannot, even

[1] Craiss., n. 671. [2] Devoti, lib. i., tit. iii., n. 12. [3] Ib., n. 13.
[4] Ferraris, V. Papa art. i., n. 1. [5] Ib., n. 10.

with the consent of the cardinals, issue a constitution empowering a Pope to elect his successor.[6] Not merely cardinals, but others, even laymen, are eligible to the[7] Pontificate, though since the time of Urban VI. cardinals only have been elected.[8] III. The Pope always wears the stole[9] (*orarium*); he also, at times, wears the tiara—*i.e.*, a hat or mitre encircled with three crowns, as an emblem of his supreme magisterial, legislative, and judicial authority.[10] He does not make use of the crosier, as the curved staff denotes limitation of power.[11] Again, "solus Romanus Pontifex, in missarum solemniis pallio *semper* utitur et *ubique*."[12] Others entitled to the pallium can wear it only on certain days, and *in* their churches, but not *out* of them, because they are called only in *partem sollicitudinis, non in plenitudinem potestatis*. The cross is borne before[13] the Pope wherever he goes; others, even patriarchs, cannot make use of this privilege in Rome or where the Pope may be. Moreover, the Pope usually carries the Blessed Sacrament with[14] him when on long journeys. In the following articles we shall treat of the primacy and the rights attached to it.

## Art. II.

### *On the Primacy of the Sovereign Pontiff.*

458. *Nature of the Primacy conferred by God upon the Pope*—Primacy or supremacy, in general, is of two kinds: one of honor, the other of jurisdiction. The primacy of honor (*primatus honoris*) is that by which a person holds the first place, without having any authority over others. The primacy of jurisdiction (*primatus jurisdictionis*) is that by which

[6] Ferraris, V. Papa, art. i., n. 12. [7] Ib., n. 46–49.
[8] Phillips, Lehrb., p. 206. Ratisbon, 1871. [9] Craiss., n. 673. [10] Ib.
[11] Cap. de Sacr. Unct. [12] Cap. ad Honor. de Auctoritate et Usu Pallii.
[13] Walter, Kirchenr., § 124. Bonn, 1839. [14] Craiss., n. 673.

a person not only takes precedence of others, but has authority over them.[15] The primacy, as vested *jure divino* in the Roman Pontiff, is the pre-eminence both of honor and of jurisdiction[16] over the whole visible Church, and consists in the full and supreme[17] ordinary and immediate power to rule over the whole Church—"pascendi, regendi ac gubernandi universalem Ecclesiam *plena potestas.*"[18]

459. *Institution of the Primacy.*—We lay down the following proposition: "The Roman Pontiff has received from[19] God (*jure divino*) not only the *primatus honoris*, but also[20] *jurisdictionis* over the entire Church." This is, at present, *de fide.*[21] The proposition has two parts: the *first* regards the institution of the primacy, and asserts that the Pope has, *jure divino*, the primacy of jurisdiction; this is against Richer and the Jansenists, who maintain[22] that Christ first and directly gave jurisdiction to the entire Church,[23] or the body of the faithful, by whom it is delegated to the Pope and the[24] bishops. The *second* has reference to the nature of the primacy, and is chiefly against the Greek schismatics, who assert that the Roman Pontiff has only the *primatum honoris*, and is but the first among equals. We now proceed to prove simultaneously both parts of the above proposition as follows: Peter and his successors received from Christ the primacy, not only of honor, but also of jurisdiction over the whole Church; but the Roman Pontiff is the successor of Peter, therefore the Roman Pontiff holds from Christ the primacy not only of honor, but also of jurisdiction over the universal Church.[25]

460. We prove the *major* as follows: I. *Peter received the*

[15] Craiss., n. 674.
[16] Perrone, De Rom. Pontif., cap. i.
[17] Phillips, Lehrb., p. 170.
[18] Conc. Vaticanum, sess. iv., cap. iii.
[19] Phillips, l. c., p. 170.
[20] Craiss, n. 675.
[21] Conc. Vaticanum, sess. iv., cap. iii., cfr. Craiss., n. 676; Craiss., Elementa, n. 339.
[22] Cfr. our Notes, p. 39.
[23] Cfr. Perrone, l. c.
[24] Soglia, vol. i., p 170
[25] Salzano, l. c., vol. ii., p. 62.

*primacy from our Lord Himself.*[26] This we prove, 1, *from Sacred Scripture.* Our Lord said to St. Peter: "Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam, et portae inferi non praevalebunt adversus eam."[27] Here Christ compares his Church to a material edifice and Peter to its foundation. Now, the foundation is to the house what the head is to the body. Our Lord, therefore, made Peter the head of his Church—*i.e.*, conferred upon him the primacy of jurisdiction over the entire Church. For the head governs the body, as the foundation supports the building.[28] Hence Pope Leo I. says: "Ut exortem se mysterii intelligeret esse divini, qui ausus fuisset a Petri soliditate recedere. Hunc enim . . id quod ipse erat, voluit nominari, dicendo, *Tu es Petrus*, etc., ut aeterni aedificatio templi . . in Petri soliditate consisteret."[29] Again, our Lord said: "Tibi dabo claves regni coelorum."[30] Now, among nearly all nations, especially the Jewish, the giving of the keys of a house or city was the symbol of the bestowal of full control over such house or city. Hence, our Lord, by these words, promised to confer upon Peter full—that is, supreme—power over the kingdom of heaven—*i.e.*, the Church.[31] After his resurrection our Lord fulfilled this promise in these words addressed to St. Peter: "Pasce agnos meos, . . pasce oves meas."[32] Exegetists show that in the ordinary language of the Sacred Scriptures the word *pascere* (ποιμαίνειν) means to govern.[33] Again, to feed sheep is to lead them to fertile pastures, guide, watch over, and protect them; in a word, to have complete charge of them.[34] Our Lord, therefore, in charging Peter to feed his sheep—that is, the entire Church conferred—upon him the

[26] First part of the major.

[27] Matth. xvi., 18.

[28] Perrone, l. c., prop. i.

[29] Can. *Ita Dominus*, 7, dist. 19.

[30] Matth., l. c.

[31] Perrone, l. c.; Craiss., n. 675.

[32] Jo. xxi., 15–18.

[33] Phillips, Kirchenr., vol. i., p. 114.

[34] Salzano, l. c., vol. ii., p. 63.

supreme teaching and governing power over the whole Church.[35] Thus St. Bernard,[36] addressing Pope Eugene III., beautifully writes: "Tibi universi crediti, uni unus; nec modo ovium, sed et pastorum tu unus omnium pastor." [37] 2. *From the Council of the Vatican:* [38] "Si quis dixerit, B. Petrum apostolum a Christo Domino constitutum non esse apostolorum omnium principem et totius Ecclesiae militantis visibile caput; vel eundem honoris tantum, non autem verae propriaeque jurisdictionis primatum ab eodem D. N. Jesu Christo directe et immediate accepisse; anathema sit." II. *The primacy of blessed Peter*[39] *is jure divino perpetual, and must, therefore, pass to the successors of St. Peter.* This is evident from the fact[40] that the primacy was not instituted for the personal benefit of Peter, but for the welfare of the entire Church—*i.e.*, for the preservation of her unity[41] both in faith and communion.

461. *The minor*—namely, the Roman Pontiff is the successor of St. Peter—is thus defined by the Vatican Council:[42] "Si quis ergo dixerit, non esse ex ipsius Christi Dñi institutione, seu jure divino, ut B. Petrus in primatu super universam Ecclesiam habeat perpetuo successores; aut Romanum Pontificem non esse B. Petri in eodem primatu successorem; anathema sit." Protestants strain every nerve to show that Peter either never came to Rome, or, having been there, left it again, as he did Antioch; that, consequently, the Roman Pontiffs are not the successors of St. Peter. A brief outline of Peter's life after our Lord's ascension will demonstrate how untenable and indefensible are these assertions. Peter remained in Judea nearly four years after his Master's ascension; he then went to Antioch, which he governed seven years as bishop. In the eleventh year after our Lord's Passion he repaired to Jerusalem, was

[35] Cfr. Soglia, l. c., vol. i., p. 141.
[36] Lib. ii., c. 8.
[37] Cfr. Phillips, l. c., p. 117.
[38] Sess. iv., cap. i.
[39] Second part of the major.
[40] Cfr. Conc. Vatican., l. c., cap. ii.
[41] Soglia, l. c., p. 173.
[42] Sess. iv., cap. ii.

there imprisoned by Herod, but liberated by an angel. In the same year he went to Rome. In the seventh year of his sojourn in Rome an edict was published by the Emperor Claudius exiling all Jews residing in Rome. Consequently, Peter returned to Jerusalem, where he attended the Council. Upon the death of Claudius the apostle returned to Rome, and there suffered martyrdom in the fourteenth year of Nero's reign, after having governed the see of Rome twenty-five years.[43] The fact that Peter was in Rome is attested by Papias, a disciple of the apostles; by Tertullian; by Hegesippus in the second century; by St. Jerome,[44] who explicitly writes that Simon Peter, after presiding over the See of Rome for twenty-five years, was there crucified "capite inverso," and buried "juxta viam Triumphalem."

462. *Union of the Primacy with the See of Rome.*—It is a doctrine[45] of divine revelation that the *primatus jurisdictionis* is by divine appointment, not by the will of Peter or the Church, inseparably united to the See of Rome. We say, *it is a doctrine of divine revelation;* for, though formerly an open question, at least according to some, it is at present undoubtedly *de fide*, having been thus defined by the Vatican Council:[46] "Docemus, Ecclesiam Romanam, *disponente Domino*, super omnes alias [ecclesias], ordinariae potestatis obtinere principatum."[47] Pius IX. has therefore deservedly condemned the following proposition: "Nothing forbids that the Supreme Pontificate should be transferred from the Roman bishop and city to another bishop and another State."[48] But, it may be objected: The primacy, when first instituted by Christ, was *personal*—*i.e.*, attached to the *person* of Peter; not *local*—*i.e.*, not annexed to any particular place or bishopric.[49] The objection does not hold; for the pri-

[43] Salzano, l. c., lib. ii., pp. 63, 64.
[44] In Catal. Script. Eccl. in Petro.
[45] Our Notes, p. 41.
[46] Sess. iv., cap. iii.
[47] Cfr. Craiss., n. 677, in fine.
[48] Syll., 1864, prop. xxxv.
[49] Ferraris, V. Papa, art. ii., n. 74.

macy was indeed personal—*i.e.*, attached to the person of Peter—"non tamen ut Petrus erat persona *privata*, sed ut *publica;*[60] et ex tunc fuit [primatus] jussu Christi etiam localis, seu certo loco, Romanae Urbi nimirum affixus; adeoque non ex voluntate Petri, sed ex voluntate et jussu Christi fuit primatus Ecclesiae annexus Episcopatui Romano."[61] Nor can it be objected that the Popes may transfer the Papal See to some other city, as, in fact, they did transfer it to Avignon; for *ubi Papa, ibi Roma*—the Pope, wherever he may be, is and remains Bishop of Rome. Finally, neither will it avail to say: The city of Rome may be totally destroyed; for Rome, as a city, may perhaps perish, but Rome, as a see, is imperishable.[62]

463. *Form of Government of the Church.*—The principal forms of government are the monarchical, the aristocratic, and the democratic or republican.[63] I. *Chief errors on this point.*—1. Luther and Calvin assert that the Church has a democratic form of government, her supreme power being in the[64] hands of the people or laity. 2. The Greek schismatics, and the body of Protestants called Presbyterians, maintain that the Church has an aristocratic[65] form of government, the supreme power, according to the former, being vested in the bishops; according to the latter, in the presbytery. 3. Bossuet held that the Roman Pontiff was inferior[66] to an oecumenical council, and that the legislative power in the Church lay conjointly in the hands of the Pope and of the bishops. This opinion is at present heretical. The two preceding theories are also heretical. II. *Correct view.*—1. No small[67] number of Catholic theologians, headed by the illustrious Cardinal Bellarmine, hold that the Church is a monarchy, tempered,[68] however, by aristocracy,

[60] *I.e.*, the primacy attached to Peter, not as a *private* but *public* person.
[61] Ferraris, l. c., n. 75; cfr. Soglia, vol. i., p. 178.
[62] Ib., n. 78–80, 81
[63] Salzano, l. c., lib. i., p. 22.
[64] Ib., p. 23.
[65] Ib., p. 24.
[66] Ib., p. 26.
[67] Ib.
[68] Cfr. Devoti, Prolegom., n. 16–20.

in the sense, namely, that bishops rule in the Church *jure proprio*, being placed to rule by the Holy Ghost, but not by the Roman Pontiff. 2. Others admit[59] that bishops are placed by the Holy Ghost to rule in the Church; yet, as they are placed to rule *subordinately* to the Pope, it follows that the Church is an absolute monarchy.[60] The difference between these two opinions seems to be verbal rather than real. Both admit that the supreme power in the Church is vested in a *single* ruler—the Roman Pontiff—and that therefore the Church is a monarchy as to the form of government; according to Craisson,[61] this is *de fide*.

464. *Q.* Are all the actions of the Pope performed by him as head of the Church?

*A.* They are not. For the Pontiff may sometimes act, not as the Vicar of Christ, but as the Patriarch of the West, exercising only those rights which appertain to other patriarchs. Again, he may act only as the Primate of Italy, or Metropolitan of the Roman Province, or merely as Bishop of the city of Rome.[62] *Has the Sovereign Pontiff "jurisdictio immediata" over the entire Church?* We premise: 1. According to Febronius and many Gallicans, "non potest S. Pontifex ordinarie, invitis episcopis, consueta episcoporum munera in eorum dioecesibus exercere, quia non est pastor in alienis dioecesibus *immediatus*, sed tantum *mediatam* habet in iis jurisdictionem."[63] According to these writers, *jurisdictio mediata* is that which can be exercised only in certain[64] cases determined by canon law—*v.g.*, when bishops neglect their duties;[65] on the other hand, *jurisdictio immediata* is that which is exercisible by the Pope[66] or his delegates not only in case of necessity, but constantly. We now answer directly: The Roman Pontiff has direct or immediate, not

[59] Cfr. Phillips, Kirchenr., vol. i., p. 251. [60] Salzano, l. c., p. 27. [61] N. 675.
[62] Bened. XIV., De Syn., lib. ii., cap. i.; cfr. Devoti, lib. i., tit. iii., n. 21.
[63] Ap. Craiss., n. 680. [64] Cfr. Soglia, vol. i., p. 180.
[65] Cfr. our Notes, pp. 41, 42. [66] Cfr. Tarqu., p. 113.

merely mediate, authority over the whole Church. This is *de fide*,[67] being thus defined by the Vatican Council:[68] "Si quis dixerit, Romanum Pontificem non habere plenam et supremam potestatem jurisdictionis in universam Ecclesiam, aut hanc ejus potestatem non esse ordinariam et *immediatam* sive in omnes aut singulas ecclesias, sive in omnes et singulos pastores et fideles, anathema sit."

465. *Q.* Can the Pope abdicate?

*A.* He can; the resignation must be made to the College of Cardinals, whose exclusive privilege it is to elect the successor.[69]

466. *Q.* Is a Pope who falls into heresy deprived, *ipso jure*, of the Pontificate?

*A.*—1. There are two opinions: one holds that he is, by virtue of divine appointment, divested, *ipso facto*, of the Pontificate; the other, that he is, *jure divino*, only removable. Both opinions agree[70] that he must at least be *declared* guilty of heresy by the Church—*i.e.*, by an oecumenical council or the College of Cardinals. 2. The question is hypothetical rather than practical.[71] For although, according to the more probable opinion, the Pope may fall into heresy and err in matters of faith, as a private person,[72] yet it is also universally admitted that no Pope ever did fall into heresy,[73] even as a private doctor.

[67] Cfr. Craiss., n. 680.
[68] Sess. iv., cap. iii.
[69] Ferraris, V. Papa, art. ii., n. 36.
[70] Craiss., n. 68[illegible].
[71] Phillips, Kirchenr., vol. i., pp. 277, 274.
[72] Ib., p. 277.
[73] Ferraris, l. c., n. 62-66. Genuae, 1768.

# CHAPTER II.

## ON THE RIGHTS AND PREROGATIVES OF THE ROMAN PONTIFF.

### SECTION I.

### *Rights of the Roman Pontiff in "Spiritual Matters."*

### ART. I.

### *Rights of the Roman Pontiff that flow "immediately" from his Primacy or Supremacy over the entire Church; his Infallibility and Supreme Legislative Authority.*

467. *Mode of Determining the Rights annexed to the Primacy of the Pope.*—I. Nicholas de Hontheim (Justinus Febronius)[1] erroneously divided the rights contained in the supremacy of the Roman Pontiff into essential (*jura essentialia, primigenia*)—those, namely, which were conferred upon the Roman Pontiffs by our Lord[2] himself, and therefore exercised already in the first centuries of the Church: and into accidental (*jura accidentalia, adventitia, secundaria, accessoria, humana*)[3]—*i.e.*, those which originally, *i.e.*, in the first seven centuries of the Church, were exercised by bishops and provincial councils, but which were afterwards, chiefly through the ambition of Popes, and by means of the Isidoran decretals, annexed to the primacy. According to Febronius and his school, the primacy may exist—in fact, has existed—without the *jura accidentalia*. In this radically wrong division the *exercise* of the power inherent in the

[1] Phillips, Lehrb., pp. 171, 172, n. 1.

[2] Cfr. Soglia, vol. i., p. 183

[3] Phillips, Kirchenr., vol. v., § 202, pp. 21–34.

Papal supremacy is confounded with the *power*[4] itself. The former, it is true, varies according to circumstances; but the latter is, and always has been, the same. II. Some Catholic canonists[5] distinguish between the various rights of the primacy according to the threefold power which Christ bestowed upon His Vicar on earth—namely, the *potestas magisterii, ministerii, et jurisdictionis* or *imperii.* Others, whom we prefer to follow, divide the rights of the primacy into those which flow *immediately* and those which flow *mediately* from the supreme power of the Pope.[6] Now, what rights emanate *immediately* or *directly* from the primacy? Those which are attached to or contained in the primacy in such manner as to be the foundation of various other rights, which latter, being based upon the former, are named mediate rights. Now, the immediate rights of the Papal supremacy are these two: infallibility and supreme legislative authority. For the Pope is the[7] *centrum necessarium totius communionis Catholicae;* this is *de fide.*[8] Now, the unity of the Church consists chiefly, 1, in the unity of faith (*in unitate fidei*), inasmuch as all the faithful, professing the same faith, constitute but[9] one Church; 2, in the unity of charity (*in unitate caritatis, communionis*), by which is meant the submission of the faithful to their bishops, and of the bishops and people to the Pope.[10] Now, if the Pope be the *centrum unitatis fidei*, and therefore charged with the preservation of unity in matters of faith and morals, he must be infallible; if he is the *centrum unitatis communionis*, and therefore commissioned to enforce unity in matters of discipline, he[11] must have legislative authority, supreme and universal.[12]

[4] Phillips, Lehrb., p. 172.
[5] Ib., p. 171.
[6] Salzano, lib. ii., pp. 68–70.
[7] Craiss., n. 684.
[8] Conc. Vaticanum, sess. iv., cap. iii., iv.; cfr. Craiss., l. c.
[9] Soglia, vol. i., p. 177.
[10] Cfr. Conc. Vaticanum, l. c., cap. iii.
[11] Cfr. Salzano, l. c., p. 69 seq.
[12] Our Notes, p. 41.

468.—I. *Infallibility of the Roman Pontiff.*—That the Sovereign Pontiff is the *centrum unitatis fidei*, and therefore vested with infallibility, is amply proved in dogmatic theology; the proofs are taken from Sacred Scripture[13] and tradition. We content ourselves here by giving the definition of the Oecumenical Council of the Vatican:[14] "Itaque nos traditioni a fidei Christianae exordio perceptae fideliter inhaerendo, ad Dei Salvatoris nostri gloriam, religionis Christianae exaltationem, et populorum Christianorum salutem, sacro approbante Concilio, docemus et divinitus revelatum dogma esse definimus Romanum Pontificem, cum ex cathedra loquitur—id est, (*a*) cum omnium Christianorum pastoris et doctoris munere fungens, (*b*) pro suprema sua apostolica auctoritate, (*c*) doctrinam de fide vel moribus (*d*) ab universa Ecclesia tenendam definit, per assistentiam divinam, ipsi in B. Petro promissam, ea infallibilitate pollere, qua divinus Redemptor Ecclesiam suam in definienda doctrina de fide vel morum instructam esse voluit; ideoque ejusmodi Romani Pontificis definitiones ex sese, non autem ex consensu Ecclesiae, irreformabiles esse. Si quis autem huic nostrae definitioni contradicere, quod Deus avertat, praesumpserit, anathema sit." It is therefore *de fide*, at present,[15] that the Roman Pontiff, when speaking *ex cathedra*, is infallible.

469. *Q.* When does the Roman Pontiff speak *ex cathedra?*

*A.* He speaks *ex cathedra*, and is infallible of himself—*i.e.*, independently of the consent of the Church—1, when *as Pastor and Head* of the Church, and by virtue of his supreme apostolical authority, 2, he proposes to the *entire* Church, 3, any doctrine concerning *faith* and *morals*, 4, to be

[13] Matth. xvi.; Jo. xxi.; Luc. xxii.; cfr. Salzano, l. c., p. 71.

[14] Sess. iv., cap. iv., in fine

[15] Cfr. Craiss., n. 686.

believed under pain of heresy.[16] These conditions only are required for the validity of Pontifical decisions *ex cathedra*. Others are requisite for the licitness of such definitions; thus, the Pope, before giving an *ex cathedra* definition, should maturely examine into the question to be defined and consult with the cardinals; for he is merely assisted, not inspired, by the Holy Ghost when giving a definition *ex cathedra*.[17] Catholics are bound to assent to these definitions, not only externally, but also internally or mentally.[18] Moreover, the primary or chief proposition of a definition must be distinguished from propositions that are merely incidental, such as the arguments alleged by the Pope in support of the definition. The Pope is infallible only in the definition proper, not in the proofs alleged incidentally.[19]

470.—II. *Legislative Authority of the Pope.*—We now come to the second prerogative directly annexed to the primacy. The Sovereign Pontiff, as the *centrum unitatis communionis externae*, is vested, as we have seen, with supreme legislative authority over the whole Church—*i.e.*, he has, *jure divino*, power to make general laws[20] respecting the discipline of the Church; in other words, he can enact universal laws relative to divine worship, sacred rites and ceremonies, the government of the clergy, the proper administration of the temporalities of the Church, and the like.[21] Now, this power flows directly from the primacy; for the Church is a visible society, has external forms of worship, and must therefore be regulated by disciplinary laws, to be enacted by its chief ruler, the Sovereign Pontiff. Moreover, the Pope,

[16] Salzano, l. c., p. 70. Cardinal Manning expresses the same, only in different words. He says: "The Pope speaks *ex cathedra* when he speaks under these five conditions: 1, as Supreme Teacher; 2, to the whole Church; 3, defining a doctrine; 4. to be held by the whole Church; 5, in faith and morals."—The Vatican Decrees, p. 34. New York, 1875.

[17] Ib.

[18] Soglia, l. c., pp. 185, 186.

[19] Salzano, l. c., p. 71.

[20] Ib., p. 74.

[21] Cfr. Craiss., n. 688.

as was seen, can make laws respecting faith and morals; he may, *à fortiori*, establish uniformity of worship.

### Art. II.

### *Rights of the Sovereign Pontiff flowing Mediately or Indirectly from his Primacy.*

471. We here observe that the rights of the Roman Pontiff, whether they are annexed immediately or but mediately to his supremacy, are all necessarily contained in the primacy; none[22] of them are accidental or of human origin, as Febronius contends. Having premised this, we proceed to discuss the point under consideration. The Pontiff, viewed in his relations to the particular churches of the world, to the bishops, or to the entire Church, has three sorts of rights—viz., 1, those which refer to the various dioceses of the Catholic world; 2, to the bishops of Christendom; 3, or to the universal Church. We shall briefly treat of these rights.

#### § 1. *Rights of the Sovereign Pontiff in relation to the various Dioceses of Christendom.*

472. These rights are reduced chiefly to four: I. *Right of demanding an account of the state of each diocese throughout the world* (*jus relationum*).—The Pope, as we have shown, has supreme and unappealable jurisdiction, not only in matters of faith and morals, but also of discipline.[23] It is the duty of the Sovereign Pontiff to watch over the discipline of the entire Church.[24] He must therefore know the condition of all the churches or dioceses in the world. Hence he must have the right to demand from bishops an

[22] Cfr. Phillips, Lehrb., p. 172.

[23] Salzano, lib. ii., p. 74.

[24] Phillips, Kirchenrecht, vol v., § 203, p. 34.

account of the state of their dioceses[25] (*jus relationum*). Bishops are therefore obliged to visit Rome in person (*visitatio liminum S.S. apostolorum*) at certain intervals, and to report the exact state of their dioceses (*relationes status*). The bishops of Italy and Greece must go to Rome once every three years; the bishops of Germany, France, Spain, Portugal, Belgium, England, Scotland, once every four years; the bishops of Ireland (*η*, p. 502), of the rest of Europe, of North Africa, once every five years; finally, the bishops of America, once every ten years.[26] From this right of supreme direction, inherent in the Pontiff,[27] there follows to him the right, in the exercise of this his office, of freely communicating with the pastors and flocks of the whole Church.[28] II. *Power to punish delinquents.*—The Roman Pontiff, as we have shown, is vested with the supreme law-making power in the Church. Now, the legislative necessarily includes the executive or coactive power; for laws that cannot be enforced are not, properly speaking, laws.[29] III. *Power to grant dispensations.*—A law, to be just, should be binding on all persons within its sphere; yet being made for the common good—*i.e.*, for general purposes—it is not always useful or applicable in particular cases. Hence, laws should admit[30] of reasonable exceptions or dispensations. Now, it is evident that only those officials can suspend the force of a law in special cases, or dispense from it, who can make the law. The Roman Pontiff is, as was seen, the supreme law-maker in the Church; therefore he[31] can dispense from the laws of the Church, even those enacted by oecumenical councils.[32] But to this the objection is made that the Pontiffs have themselves acknowledged that they were subject to the canons.

[25] Phillips, Lehrbuch, p. 173.
[26] Infra, n. 556.
[27] Phillips, Kirchenr., vol. v., p. 38. Regensburg, 1854.
[28] Conc Vaticanum, sess. iv., cap. iii.
[29] Salzano, l. c., p. 75
[30] Ib., p. 76.
[31] Phillips, Lehrb., pp 175, 176, 178.
[32] Craiss., n. 692.

and therefore could not dispense from them. This objection does not hold; for the Popes distinguish between two kinds of canons—those, namely, which relate to themselves, and those which refer to others. They acknowledge themselves subject to those laws of the first class which confirm a divine or natural law; but if these laws are merely of ecclesiastical origin, they bind the Roman Pontiffs only *quoad vim directivam*, not *quoad vim coactivam*. Laws of the second class—*i.e.*, those which have no reference to the Sovereign Pontiffs—should, as a rule, be enforced by the Popes. We say, *as a rule;* for they are dispensable, as has been shown.[33] Dispensations granted by the Sovereign Pontiffs, without sufficient reasons, are valid, though illicit.[34] Though Popes, as we have just seen, cannot dispense *in rebus juris divini*,[35] they may nevertheless declare that, in certain contingencies, the *jus divinum* ceases to bind.[36] IV. *Right of receiving appeals from the sentences of all ecclesiastical tribunals.*—Man, even in his judicial decisions, is naturally liable to error.[37] The remedy of appeal, therefore, from an inferior to a superior judge, necessarily exists in every society. The Roman Pontiff, therefore, as the supreme judge in the Church, can receive appeals from all parts of the Catholic world. His sentence alone is unappealable.[38]

### § 2. *Rights of the Pope respecting Bishops.*

473. Christ conferred upon Peter and his successors power to feed and govern, not only his lambs—*i.e.*, the faithful—but also the shepherds—*i.e.*, the bishops. The rights of the Pontiff relative to bishops are four: I. *The Pope, by virtue of his primacy, can create bishops and transfer them from one place to another.*[39]—The Council of Trent[40]

[33] Salzano, l. c., pp. 76, 77. [34] Phillips, Lehrb., p. 179. [35] Ib.
[36] Craiss., n. 693. [37] Salzano, l. c., p. 77. [38] Phillips, l. c., p. 180.
[39] Salzano, l. c., p 85. [40] Sess. xxiii., cap. iv., can. 8.

says: "If any one saith that the bishops, who are assumed [*i.e.*, appointed] by authority of the Roman Pontiff, are not legitimate and true bishops, but are a human figment, let him be anathema." Now, if the Pope alone can appoint bishops, it follows that he alone can transfer them from one see to another.[41] II. *Right of reserving cases.*—It is a disputed question whether bishops receive jurisdiction immediately[42] from the Pope or from God. One thing, however, is certain—namely, the jurisdiction of bishops, so far as its exercise is concerned, depends[43] upon the Sovereign Pontiff, whose privilege it is to assign to bishops their subjects. Hence, the Pope may restrict the authority of bishops, and reserve to himself the absolution from the more grievous crimes.[44] III. *The Pontiff, by virtue of his primacy, has the right to depose bishops from their sees,*[45] *and to reinstate them.* This follows from what has been said. IV. *Finally, the Pope has the right to convoke, preside over, and confirm oecumenical councils.* This proposition needs no proof. Bishops, therefore, are obliged, if not lawfully[46] hindered, to assist at these councils. The body of bishops, when separated from the Pontiff, has no supreme[47] power in the Church. Hence, it is absurd to say that an oecumenical council[48] is superior to the Pope; for no council is oecumenical except when united[49] to the Pope.

### § 3. *Rights of the Pontiff relative to the Entire Church, or the Church as a Whole.*

474. The rights of the Roman Pontiff, falling under this head and emanating mediately from his primacy, may be reduced to four, discussed under the following heads: I. *Di-*

[41] Phillips, l. c., p. 188.
[42] Cfr. our Notes, p. 77
[43] Salzano, l. c., p. 86; cfr. Craiss., n. 690, 868.
[44] Conc. Trid., sess. xiv., cap. vii.
[45] Salzano, l. c., p. 87
[46] Ib.
[47] Craiss., n. 690.
[48] Ib., 691.
[49] Salzano, l. c., p. 90; cfr. Conc. Vaticanum, sess. iv., c. iii.

*vision and union of dioceses.*—1. The Pope alone can divide a diocese into two or more. Dioceses are divided for various reasons—*v.g.*, when they are vast.[60] As a rule, the bishop of the diocese to be divided is consulted[61] as to the division; his consent, however, is not essential. 2. The Holy See alone can unite two or more dioceses into one. Dioceses are united for different reasons—*v.g.*, when they are small.[62] II. *Canonization of saints and uniformity of liturgy.*—Both these are of interest to all Christendom. Hence, it is the prerogative of the Roman Pontiff to enact laws in regard to the canonization of saints; he may also correct the Roman Missal and Breviary, and, in general, ordain all that pertains to the sacred liturgy.[63] III. *Religious orders.*—These, too, have a certain relation to the whole Church; hence, they are instituted,[64] approved, and, if need be, suppressed, by the Pontiff. IV. *Plenary indulgences.*—The Roman Pontiff, as head of the Church, is the supreme dispenser of her treasures; he alone, therefore, can grant plenary indulgences for the *entire* Church.[65]

475. *Rights of the Sovereign Pontiffs relative to the Causae Majores.*—It is certain that all *causae majores* are reserved to the Holy See. Now, by *causae majores* we mean, in general, all ecclesiastical matters of more than ordinary importance or difficulty. Such matters may be of a graver character, either *intrinsically*—*i.e.*, by their very nature, *v.g.*, questions of faith or general discipline; or *extrinsically*—*i.e.*, because of certain circumstances, *v.g.*, difficulties between bishops and the civil power.[66] Now, all matters of this kind are to be referred by bishops to the Holy See, and determined solely by it. For the Pontiff, as we have shown, has *jurisdictio immediata* over the entire Church; hence, he can reserve—in fact, has reserved—to himself the power to

[60] Salzano, lib. ii., p. 88. [61] Phillips, Lehrb., p. 185. [62] Ib [63] Salzano, l. c., p. 89. [64] Ib. [65] Ib. [66] Phillips, l. c., p. 180

decide all matters of greater moment. Canonists[57] disagree as to what matters are precisely to be considered *causae majores.* *The Potestas Ordinaria and Extraordinaria of the Roman Pontiff.*—When the Roman Pontiff accommodates himself in his proceedings to the rules established by his predecessors or to the decrees of oecumenical councils, he is said to proceed *de jure ordinario,*[58] *de potestate ordinaria;* but when he does not observe these prescriptions, he acts *de jure extraordinario.* In derogating, however, from the Council of Trent, the Pope does not act *de potestate extraordinaria;* for this Council[59] itself says: "All things which have been ordained in this sacred Council have been so decreed as that *the authority of the Apostolic See is untouched thereby.*"

### Art. III.

*Rights of the Pope as Bishop, Metropolitan, Primate, and Patriarch.*

476. The city of Rome and the surrounding country within a circumference of forty miles forms the diocese[60] of the Pope, in his capacity of bishop. This diocese is governed by the Pontiff in the same manner as other dioceses are ruled by other bishops. The Pope, however, does not personally or directly administer the diocese of Rome, but appoints one of the cardinals resident in Rome to take direct charge of it, and act in his stead or as his vicar. This cardinal-vicar is assisted in the administration of the diocese by a coadjutor or suffragan bishop (*vice-gerente*), who in turn is aided by a number of inferior officials.[61] The Pope is also metropolitan of ten (civil) suburbicarian provinces,[62] Primate of Italy, and Patriarch of the West,[63] and therefore, in

[57] Cfr. Craiss., n. 694. [58] Ib., n. 695. [59] Sess. xxv., cap. 21, De Ref.
[60] Phillips, l. c., pp. 201, 202. [61] Ib., p. 203.
[62] Craiss., n. 679. [63] Bened. XIV., De Syn., lib. ii., cap. ii.

these various capacities, exercises the prerogatives attaching to these several dignities.

## SECTION II.

### *On the Rights of the Supreme Pontiffs in "Temporal Matters."*

### ART. I.

#### *Various Opinions on this Head—Distinction between the Direct and Indirect Power of Pontiffs in Temporal Things.*

477.—I. There are four different opinions[44] respecting the power of the Popes in temporal things: 1. *The first* holds that the Sovereign Pontiff, as such, has, *jure divino*, absolute power over the whole world, in political as well as ecclesiastical affairs. 2. *The second*, held by Calvinists and other heretics, runs in the opposite extreme, and pretends (*a*) that the Sovereign Pontiff has no temporal power whatever; (*b*) that neither Popes nor bishops had any right to accept of dominion over cities or states, the temporal and spiritual power being *jure divino*, not unitable in the same person. 3. *The third*, advanced by Bellarmine and others, maintains that the Pope has, *jure divino*, only spiritual, but no direct or immediate temporal, power; that, however, by virtue of his spiritual authority, he is possessed of power, indirect indeed, but nevertheless supreme, in the temporal concerns of Christian rulers and peoples; that he may, therefore, depose Christian sovereigns, should the spiritual welfare of a nation so demand. Thus, as a matter of fact, Pope Innocent IV., in pronouncing sentence of deposition against Frederic II., explicitly says that he deposes the emperor *auctoritate apostolica et vi clavium*. 4. *The fourth* opinion holds that the Sovereign Pontiff has full *spiritual* authority over princes no

[44] Bouvier, Tract. de Vera Ecclesia, part iii., p. 427. vol. i. Parisiis, 1844.

less than over the faithful; that therefore he has the right to teach and instruct them in their respective duties, to correct and inflict spiritual punishments upon both rulers and peoples; but that, *jure divino,* he has no power, as asserted by Bellarmine, whether direct or indirect, in the temporal affairs of Catholic sovereigns or peoples. We say, as asserted by Bellarmine; for the advocates of this opinion, by giving the Pope full power to correct princes and peoples, necessarily attribute to him an *indirect* power in temporal things; they deny, however, that this *potestas indirecta in temporalia* includes the deposing power, as maintained by Bellarmine.
II. The first opinion is untenable, and is refuted by Bellarmine himself; the second is heretical;[65] the third and fourth seem to differ chiefly as to the deposing power of the Popes, but agree in granting that the Roman Pontiff has an indirect power in temporal things; both may be lawfully held. Before we proceed to explain our own views in this matter, and to show the relation of Church and state, we shall point out, for the better understanding of the subject under consideration, the difference between the direct and the indirect power in temporal things.

478. *Q.* What is meant by direct and indirect power in temporal affairs?

*A.* We have already shown[66] what things are to be considered temporal, what spiritual, and what mixed questions. Now, it is certain that temporal things are not so exclusively adaptable to the wants of this life[67] as not to be either conducive or injurious to the salvation of the soul. But it is also certain that the Church, in order to fulfil her mission, which is to save men, must have power to remove obstacles in the way of salvation. The Church, therefore, or the Pope, has authority in temporal matters, not indeed directly —*i.e.*, not in temporal matters, as such, or in themselves (*po-*

[65] Cfr. Craiss., n. 696. [66] Supra, n. 204–207. [67] Craiss. n. 697.

*testas directa et immediata in res temporales*)—but indirectly—*i.e.*, in temporal matters, so far as they relate to the salvation of the soul (*potestas indirecta in temporalia*); in other words, the Pope has power to overrule, correct, or set aside those temporal means which hinder men from attaining to eternal happiness. Having premised this, we proceed to our thesis proper.

## ART. II.

### *Relation of Church and State.*

479. From what has been said we infer: 1. In all things which are purely temporal, and lie *extra finem Ecclesiae*—outside of the end of the Church—it (*i.e.*, the Church) neither claims nor has jurisdiction. 2. In all things which promote or hinder the eternal happiness of men the Church has a power to judge and to enforce.[68] We now apply these principles to the relations of the spiritual and civil powers—*i.e.*, between Church and state—by laying down these propositions:

480. *Proposition I.—In things temporal, and in respect to the temporal end* (*of government*), *the Church has no power over the state.*[69]—The proof of this proposition is that all things merely temporal are beside (*praeter finem Ecclesiae*) or outside of the end of the Church. Now, it is a general rule that no society has power in those things which are out of its own proper end. Hence, the civil society or the state, even though every member of it be Catholic,[70] is not subject to the Church, but plainly independent in temporal things which regard its temporal end.[71]

481. *Proposition II.—In whatsoever things, whether essentially or by accident, the spiritual end—that is, the end of the*

[68] Manning, The Vatican Decrees, p. 55.

[69] Card. Tarqu., Jur. Eccl. Publ. Inst., n. 54 pp. 55, 56.

[70] Ib., p. 56.

[71] Cfr. Manning, l. c., pp. 70, 71.

*Church—is necessarily involved, in those things, though they be temporal, the Church may by right exert its power, and the civil state ought to yield.*[72]—In this proposition is contained the full explanation of the indirect spiritual power of the Church over the state.[73] The proposition is proved: I. *From reason.*—Either the Church has an indirect power over the state, or the state has an indirect power over the Church. There is no alternative. For, as experience teaches, conflicts may arise between Church and state.[74] Now, in any question as to the competence of the two powers,[75] either there must be some judge to decide what does and what does not fall within their respective spheres, or they are delivered over to perpetual doubt and to perpetual conflict. But who can define what is or is not within the jurisdiction of the Church in faith and morals, except a judge who knows what the sphere of faith and morals contains and how far it extends?[76] It is clear that the civil power cannot define how far the circumference of faith and morals extends. To do this it must know the whole deposit of explicit and implicit faith. Therefore, the Church alone can fix the limits of its jurisdiction; and if the Church can fix the limits of its own jurisdiction, it can fix the limits of all other jurisdiction—at least, so as to warn it off its own domain.[77] Hence, the Church is supreme in matters of religion and conscience; she knows the limits of her own jurisdiction, and, therefore, also the limits of the competence of the civil power. Again, if it be said that the state is altogether independent of the Church, it would follow[78] that the state would also be independent of the law of God in things temporal; for the divine law must be promulgated by the Church. It is unmeaning to say that princes have no supe-

[72] Card. Tarqu., l. c., lib. i., p. 56, n. 55. [73] Manning, l. c., pp. 70, 71.
[74] Craiss., n. 698. [75] Cfr. Phillips, Kirchenr., vol. ii., pp. 546, 547.
[76] Manning, l. c., pp. 54, 55. [77] Cfr. Syllab. 1864, prop. 19, 20, 39, 42, 54.
[78] Craiss., n. 698.

rior but the law of God;"[79] for a law is no superior without an authority to judge and to apply it. II. We next prove our thesis *from authority*. We refer to the famous bull *Unam Sanctam*, issued by Pope Boniface VIII. in 1302. This bull declares that there is but one true Church,[80] and therefore but one head of the Church—the Roman Pontiff; that there are two swords—*i.e.*, two powers—the spiritual and the temporal; the latter must be subject to the former. The bull finally winds up with this definition: "And this we declare, affirm, *define* (*definimus*), and pronounce, that it is necessary for the salvation of every human creature that he should be subject to the Roman Pontiff."[81] This is undoubtedly a *de fide* definition—*i.e.*, an utterance *ex cathedra.*[82] In fact, the bull, though occasioned by and published during the contest between Boniface VIII. and Philip the Fair, King of France—who held that he was in no sense subject to the Roman Pontiff—had for its object, as is evident from its whole tenor and wording, this: to define dogmatically the relation of the Church to the state[83] *in general* that is, universally, not merely the relations between the Church and the particular state or nation—France. Now, what is the meaning of this *de fide* definition? There are two interpretations: *one*, given by the enemies of the Papacy, is that the Pope, in this bull, claims,[84] not merely an indirect, but a direct and absolute, power over the state, thus completely subordinating it to the Church;[85] that is, subjecting it to the Church, even in *purely temporal things*. This explanation, given formerly by the partisans of Philip the Fair, by the Regalists in the reign of Louis XIV., and at present by Janus, Dr. Schulte,

[79] Manning, l. c., p. 51.

[80] Phillips, l. c., vol. iii., pp. 256, 257; cfr. Darras, Hist., vol. iii., p. 454.

[81] Fessler, True and False Infallibility, p. 81.

[82] Manning, l. c., p. 57

[83] Phillips, l. c., vol. iii., pp. 255, 256.

[84] Cfr. ib., p. 206.

[85] Cfr. Manning, l. c, pp. 61–64.

the Old Catholics, and the opponents of the Papal infallibility in general, is designed to throw odium upon the Holy See and arouse the passions of men, especially of governments, against the lawful authority of the Sovereign Pontiffs. The *second* or Catholic interpretation is that the Church, and therefore the Pope, has indirect authority over the state; that therefore the State is subject to the Church in temporal things, *so far as they relate to eternal salvation or involve sin.* Thus, the illustrious Bishop Fessler,[86] Secretary to the Vatican Council, says that this bull affirms merely that Christian rulers are subject to the Pope, *as head of the Church,*[87] but not in purely temporal things; "still less," continues Fessler, "does it [the bull] say (as Dr. Schulte formulates his second proposition) that the temporal power must act unconditionally in subordination to the spiritual." That this is the correct interpretation appears, 1, from the whole tenor of the bull itself; for it expressly declares that the spiritual and temporal powers are distinct one from the other; that the former is to be used *by* the latter *for* the Church. Again it says: "The spiritual power (*i.e.*, the Church) has to instruct and judge the earthly power, *if it be not good.*[88] If, therefore, the earthly power deviates (from its end), it will be judged by the spiritual."[89] 2. Again, before issuing the bull *Unam Sanctam*, Pope Boniface VIII. had already declared, in a consistory[90] held in 1302, that he had never dreamt of usurping upon the authority of the King (of France)[91]—*i.e.*, of assuming any power over the state in purely temporal matters; but that he had declared, in the bull *Ausculta Fili* (A.D. 1301), the King (of France) to be, like any other Christian, subject to him *only in regard to sin.* It is therefore *de fide* that the Church, and therefore

[86] L. c., p. 82.

[87] Cfr. Phillips, l. c., p. 256; cfr. Walter, Lehrb., § 42, p. 75, note (a). Bonn, 1839.

[88] Ap. Manning, l. c., p. 60.

[89] Cfr. Phillips, l. c., p. 255.

[90] Ib., p. 254.

[91] Manning, l. c, p. 62.

the Pope, has indirect power over the state, and that consequently the state, in temporal things that involve sin, is subject to the Church.

482. From what has been said we infer: 1. The authority of princes and the allegiance of subjects in the civil state of nature are of divine ordinance; and, therefore, so long as princes and their laws are in conformity to the law of God, the Church has no jurisdiction against them nor over them.[92] 2. If princes and their laws deviate from the law of God, the Church has authority from God to judge of that deviation, and to oblige to its correction.[93] 3. This authority of the Church is not direct in its incidence on temporal things, but only indirect. 4. This indirect *power* of the Church over the state is inherent in the divine constitution and commission of the Church; but its *exercise* in the world depends on certain moral and material conditions by which alone its exercise is rendered either possible or just.[94] This last conclusion is carefully to be borne in mind; it shows that, until a Christian world and Christian rulers existed,[95] there was no subject or *materia apta* for the exercise of the supreme judicial authority of the Church in temporal things. So much for the relation of the Church to the infidel state. When a Christian world came into existence, the civil society of man became subject to the spiritual direction of the Church. So long, however, as individuals only subjected themselves, one by one, to its authority, the conditions necessary for the exercise of its office were not fully present. The Church guided men, one by one, to their eternal end; but as yet the collective society of nations was not subject to its guidance. It is only when nations and kingdoms become socially subject to the supreme doctrinal and judicial authority of the Church that the conditions of its exercise are verified. So much for the relation

[92] Manning, l. c., p. 56. [93] Ib. [94] Ib. [95] Ib., p. 81.

of the Church to the Catholic State.[96] At present the world has for the most part practically withdrawn itself socially as a whole,[97] and in the public life of nations, from the unity and the jurisdiction of the Church. Now, the Church, it is true, never loses its jurisdiction *in radice* over the baptized; but unless the moral conditions justifying its exercise be present, it never puts it forth in regard to heretics or the heretical state. So much for the relation of the Church to the heretical state. In this entire question, therefore, the authority itself of the Church must be distinguished from its exercise.

### ART. III.

*The Deposing Power.*

483. This question is at present of little or no practical consequence; for, according to all canonists and theologians,[98] Popes can depose Catholic princes only—*i.e.*, princes who are Catholics not only as individuals, but as rulers; in other words, only those princes who are at the head of Catholic nations, where the Catholic religion is the only religion recognized by law. By what right was the deposing power exercised by the Sovereign Pontiffs? There are two opinions among Catholic writers: one holds that it was exercised merely by virtue of the *jus publicum* of the mediaeval ages; the other, that the deposing power, as exercised by Pope Gregory VII. and other Pontiffs, is inherent in the primacy, being included in the indirect power of the Pope in temporal things.[99] This opinion is thus expressed in our article on Gregory VII., published in *Brownson's Quarterly Review:*[100] "The power itself [*i.e.*, of deposing princes] *in*

[96] Manning, l. c., p. 82. [97] Ib., p. 87.
[98] Bouvier, Instit. Theolog., vol. i., pp. 432, 436, 437.
[99] Cfr. Manning, l. c., p. 77. [100] April, 1875, p. 211.

*radice*, we hold, is inherent in the Papacy; the power *in actu*, or its exercise, depends upon external circumstances." The moral conditions which justified the deposition of princes, when the world was Catholic, have practically ceased to exist, now that the world has practically, according to the secular social *régime*, ceased to be Catholic, and even Christian.[101] While, therefore, in former times, the exercise of the deposing power was legitimate,[102] it would not be legitimate at present.[103] Not one of the Papal bulls deposing sovereigns has the faintest trace of being a de fide definition;[104] they are merely penal sentences. Hence it is, as Pope Pius IX. himself, in one of his discourses,[105] says, "that the right of deposing princes has nothing to do with the Pontifical infallibility; neither does it flow from the *infallibility*, but from the *authority*, of the Pontiff."[106] Of course, a Catholic is bound not only to believe what the Pope defines *ex cathedra*, but also to accept and obey what he otherwise commands. We said above that the world, according to the *secular social régime*, had practically ceased to be Catholic, or even Christian. For according to the ecclesiastical social *régime* it is still formally Catholic, and there is nothing to prevent the Pope from blessing as formerly the faithful not merely individually, but the whole world collectively (*urbi et orbi*). Hence it were scarcely correct to assert absolutely that the world has now ceased to be Catholic, or even Christian.

## ART. IV.

### *Of the Temporal Principality of the Roman Pontiffs.*

484. The primacy is essentially a spiritual office, and has not, of divine right, any temporal appendage;[107] yet the

[101] Manning, l. c., p. 87. [102] Ib., p. 84. [103] Fessler, l. c., pp. 85, 86.
[104] Ib., pp. 86, 87. [105] Discorsi di Pio IX., July 20, 1871. Rome, 1872.
[106] Cfr. Manning, l. c., pp. 85, 86.
[107] Kenrick, Primacy, p. 218. Philadelphia, 1845.

Pope is, or rather was, sovereign of a small principality in Italy, designated the Patrimony of St. Peter or the States of the Church. This temporal dominion, it is true, was not bestowed by God upon the Pope in the beginning;[108] for, even toward the close of the sixth century, the Pontiffs were not as yet independent rulers of temporal dominions.[109] But when the Roman Empire was overthrown and divided into several kingdoms,[110] then it was that the Sovereign Pontiffs obtained their temporal principality,[111] *divinae providentiae consilio.*[112] This civil dominion of the Pope, whether acquired by the munificence of princes or the voluntary submission of peoples,[113] though not essential to the primacy, is nevertheless very useful, nay, in the present state of things,[114] in a measure necessary, to the free exercise of the prerogatives of the Pope as head of the Church.[115] Princes, in fact, would scarcely be willing to obey a Pontiff placed under the civil power of another ruler.[116] Napoleon I. said: We respect the spiritual authority of the Pontiff precisely because he resides neither in Madrid nor in Vienna, nor in any other state, but in Rome. Pius IX.[117] himself points out how fitting it is in every respect that no occasion should exist for suspecting that the Pope, in the administration of the Church,[118] may sometimes act under the influence of the civil power or of political parties. Now, such suspicions would be unavoidable should the Pontiff be the subject of some civil ruler. The temporal principality of the Popes has existed already eleven centuries, and thus precedes by a long lapse of time every existing sovereignty. There is, it is true, no divine guarantee that this power shall conti-

[108] Conc. Pl. Balt. II., n 47.
[109] Phillips, Lehrb., pp. 199, 200.
[110] Kenrick, l. c., p. 223.
[111] Soglia, vol. i., pp. 254, 255.
[112] Ap. Conc. Pl. Balt. II., n. 47.
[113] Craiss., n. 701.
[114] Conc. Pl. Balt. II., n. 47.
[115] Cfr. Syllab., prop. 75, 76.
[116] Soglia. l. c., p. 254.
[117] Litterae, March 26, 1860.
[118] Cfr. Kenrick, l. c., p. 228.

nue;[119] it has been treacherously wrested from the present Pontiff by the Italian government. That, however, it will revert to the Popes we have no doubt. Napoleon I., too, took these possessions from the aged Pius VII. Yet Napoleon's empire has since vanished like a dream, while the patrimony of St. Peter passed again into the hands of the Pontiffs.

485. The Council of Baltimore[120] directs that an annual collection be taken up for the Holy Father in every diocese of the country on the Sunday within the octave of the Feast of Saint Peter and Saint Paul, or such other Sunday as the ordinary may direct.

[119] Cfr. Kenrick, l. c., p. 228.

[120] Pl. II., n. 48.

## CHAPTER III.

### ON THE ASSISTANTS OR MINISTERS OF THE SOVEREIGN PONTIFF—THE "CURIA ROMANA."

486. By the *Curia Romana* we mean, in a strict sense. only those officials[1] whom the Sovereign Pontiff regularly makes use of to assist him in the government of the *universal Church;*[2] in a broad sense, also those who aid the Pope in his capacity of Bishop of Rome, Metropolitan, or Primate.[3] All these assistants are appointed by the Pope.[4] The persons composing the Court of Rome (*Curia Romana*) are divided into three classes, designated respectively *Cardinals* of the Holy Roman Church (*Cardinales S. R. E.*), *Prelates* of the Holy Roman Church (*Praelati S. R. E.*), and *curiales* in the strict sense of the term. The latter (*curiales*) are made up of the various magistrates not in prelatical dignity, of advocates and procurators, solicitors and agents, of notaries, and all those who form the cortége of the Pope.[5] These various ministers are either *intra curiam—v.g.*, cardinals—or *extra curiam—v.g.*, legates, nuncios, and the like.[6] We shall, therefore, divide this chapter into two sections: one treating of the Papal assistants *intra curiam*, the other of those *extra curiam*.

[1] Phillips, Lehrb., p. 208.
[2] Cfr. Phillips, Kirchenrecht, vol. vi., p. 7.
[3] Ib Ib.
[4] Ib., p. 10.
[6] Craiss., n. 701, 708

## SECTION I.

### *Of the Assistants of the Sovereign Pontiff "intra curiam."*

### ART. I.

### *Of Cardinals.*

#### § 1. *Origin, Appointment, and Number of Cardinals.*

487. *Origin.—Cardinals* are the immediate[7] counsellors or advisers of the Pope, and form, so to speak, the senate of the Roman Church.[8] Hence, they are compared to the seventy ancients appointed to assist Moses, and to the apostles chosen to aid our Lord. The College of Cardinals is thus defined: "Clericorum coetus ad auxiliandum Romano Pontifici in Ecclesiae regimine, sede plena, et ad supplendum eundem, sede vacante, institutus."[9]

488. *Q.* Are cardinals of divine or human institution?

*A.* The question is controverted.[10] It were difficult to show that the dignity of cardinals, as at present understood is not of merely ecclesiastical institution.[11] The name itself of cardinal does not seem to have been used before the time of Pope St. Sylvester.[12] At first it was applied to all ecclesiastics permanently in charge of churches.[13] Pope Pius V. in 1567 ordained that it should henceforth be exclusively applied to the cardinals of the Roman Church.[14] Yet in Naples, even at present, fourteen canons are named cardinals.[15] In several other dioceses, also, some of the canons are still called cardinals.[16] Cardinals are so called from the word *cardo*, a hinge; for, says Pope Eugenius IV.,[17] "sicut

[7] Phillips, Kirchenr., l. c., p. 10. [8] Craiss., n. 702. [9] Ib.
[10] Ib., n. 703. [11] Cfr. Ferraris, V. Cardinalis, art. i., n. 1, 2. [12] Ib., n. 3, 4.
[13] Soglia, vol. i., p. 257. [14] Ferraris, l. c., n. 6. [15] Salzano, lib. ii., p. 99.
[16] Craiss., n. 704. [17] Const. *Non Mediocri*, § 14.

super *cardinem* volvitur ostium domus, ita super eos [*cardinales*] sedis apostolicae ostium quiescit." The cardinals are, so to say, the hinges upon which the government of the entire Church turns.[18]

489. *Mode of Appointment of Cardinals.*—1. The manner of creating cardinals underwent change from time to time. Several things prescribed in the Roman ceremonial are now obsolete. The Sovereign Pontiff has the sole and free power of appointment to the cardinalate; in making appointments he is not obliged to use any specific formula, though the following is given in the Roman ceremonial: "Auctoritate Dei Patris . . . assumimus N in presbyterum vel diaconum S. R. Ecclesiae cardinalem."[19] 2. If the newly-appointed cardinal is in Rome, he proceeds to the Apostolic Palace, where one of the old cardinals presents him to the Holy Father, who then gives him the red cap (*birretum rubrum*), and, in a subsequent public consistory, also the red hat (*galerum rubrum*). The ceremony of closing and opening the mouth,[20] of giving the ring and assigning the title, takes place in a later consistory. 3. To cardinals elect not living in Rome[21] the red cap or beretta only is sent, and they must promise on oath to visit the Holy Father within a year, so that the other ceremonies of their elevation may take place. 4. Cardinals, at present, obtain all the rights of cardinals the moment they are appointed in secret consistory, even before they are invested with any of the insignia of the cardinalate. Hence, the above ceremonies—namely, the imposing of the red cap and hat, etc.—are not absolutely necessary.[22]

490. *Q.* What qualifications are required for the cardinalate?

*A.* 1. The same as those prescribed by the Council of

[18] Ferraris, l. c., n. 8. [19] Ap. ib., n. 9–13. [20] Phillips, Lehrb., p. 210.
[21] Ib. [22] Ferraris, l. c., n. 20–24.

Trent[23] for the episcopal dignity. Hence, only those should be made cardinals who have the purity of morals, age, learning, and other qualifications required by the Council of Trent for bishops. Only such persons as are of the most exalted merit should be raised to the cardinalate. 2. The Pope should,[24] as far as it can be conveniently done, select the cardinals out of all the nations of Christendom. 3. Not less than four should be taken from the regular and mendicant orders.[25] For the other qualifications, see Ferraris.[26]

491. *Orders of Cardinals.*—Cardinals are divided into the three orders of bishops, priests, and deacons.[27] The origin of this classification dates far back. Thus, 1, the order of cardinal-priests seems to have originated in this manner: Pope St. Evaristus, in the first century of the Church, established seven *titles* or churches, which were entrusted to the care of seven priests, who there administered the sacraments. *proprio jure*,[28] and who were afterwards called cardinal-priests. 2. The origin of cardinal-deacons is this:[29] To he seven priests just mentioned were associated seven deacons (*diaconi, regionarii*), so called[30] because they presided over the seven *diaconiae—i.e.*, hospitals, and hospices or houses, situate in the different quarters of Rome, where orphans, widows, and the poor in general were received and supported out of the patrimony of the Church. The erection of these *diaconiae*, to which chapels were also attached, is ascribed by the *Liber Pontificalis* to Pope Clement I. (91-100). These deacons were afterwards termed cardinal-deacons. 3. The order of cardinal-bishops came into existence in the eighth or, according to some,[31] in the eleventh century, when the Sovereign Pontiffs appointed

[23] Sess. xxiv., cap. i., de Ref. [24] Ib. [25] Sixtus V., *Const. Postquam*
[26] V. Cardinalis, art. i., n. 24-38. [27] Phillips, Lehrb., p. 209.
[28] Salzano, lib. ii., p. 100. [29] Ib.
[30] Phillips, Kirchenr., vol. vi., pp. 65-77. [31] Soglia, vol. i., p. 257.

the seven suburban bishops of Rome as their assistants in the government of the entire Church.

492. *Number of Cardinals.*—The number of cardinals has, in the course of time, suffered frequent changes.[32] In the time of Pope Paschal II. there were ninety cardinals. Pope Sixtus V.[33] ordained that their number should not exceed seventy. Nor have any Popes, from the time of Sixtus V. to the present day, departed from this rule.[34] Of this number six are cardinal-bishops, fifty cardinal-priests, and fourteen cardinal-deacons.[35] We observe here, there is a material difference between a bishop who is made a cardinal and a cardinal-bishop. Only the six bishops of the suburbicary dioceses (*Ecclesiae suburbicariae*) of Rome are cardinal-bishops,[36] or bishops of the Roman Church. All other cardinals, even though bishops by consecration and in charge of dioceses, are but cardinal-priests, or, as the case may be, cardinal-deacons; they are bishops, indeed, of their respective dioceses, but only priests or deacons of the Roman Church.[37]

## § 2. *Rights and Duties of Cardinals.*

493.—I. *Dignity and Rights of Cardinals.*—The cardinalate is, after the Papal, the highest dignity in the Church.[38] Being the electors of the Sovereign Pontiff *sede vacante*, and his counsellors[39] *sede plena*, the cardinals take precedence of even patriarchs, metropolitans, and primates.[40] The reason is that priority of rank is regulated, not by the *ordo*, but by one's office and *jurisdictio*.[41] Now, cardinals have greater

[32] Phillips, Lehrb., p. 209. [33] *Const. Postquam*; cfr. Craiss., n. 708.
[34] Ferraris, l. c., n. 40.
[35] Salzano, l. c., p. 100; cfr. De Luise Codex Can. Eccl., p. 14. Neapoli, 1873. [36] Cfr. Craiss., n. 708. [37] Salzano, l. c., p. 100.
[38] Ferraris, V. Cardinalis, art. ii., n. 1.
[39] Devoti, lib. i., tit. iii., sect. ii., n. 22 seq.
[40] Phillips, Kirchenr., vol. vi., pp. 256–263. [41] Ferraris, l. c., n. 2-5.

*jurisdictio* than bishops; for, together with the Pope, they have charge, not of one diocese each, as other bishops, but of all the dioceses of the Catholic world.[42] Cardinals are, moreover, Roman princes[43]—nay, are considered princes of the blood.[44]

494.—II. *Duties of Cardinals.*—Their duties regard either their own churches or titles (*tituli*) or the entire Church 1. *Duties of Cardinals relative to their Titles.*—1. Cardinals have ample jurisdiction in all matters relating to the management and ecclesiastical discipline of their titular churches;[45] but they are no longer, as formerly, vested with *jurisdictio quasi-episcopalis*[46] in their titles. 2. All cardinals not having dioceses out of Rome are bound to reside in their titles—that is, in Rome.[47] Cardinals who are bishops or archbishops of dioceses out of Rome must reside in their respective sees.[48] The suburbicary cardinal-bishops, however,[49] are not obliged to reside in their dioceses. 3. No cardinal is allowed to leave Rome without permission from the Holy Father;[50] this applies even to cardinals who are ordinaries of dioceses, when they visit Rome.[51] 2. *Duties of Cardinals relative to the whole Church.*—I. *Sede plena—i.e.*,

[42] Soglia, vol. i., p. 259. [43] Phillips, l. c., p. 281. [44] Salzano, l. c., p. 102.

[45] Hence, cardinal priests and deacons can visit their titles and see that everything is done in accordance with the discipline of the Church—*v.g.*, see that the rubrics are observed. Moreover, they can, in their titles, make use of the pontifical insignia, give the episcopal blessing, and confer tonsure and minor orders upon members of their household (*familiaribus*). We have said, *cardinal priests and deacons;* for the cardinal-bishops of the six suburban sees near Rome have no titular churches in Rome, and therefore cannot exercise the above rights in any of the churches of Rome, save by special leave from the cardinal-vicar. The authority of cardinals in their titles, being at present restricted to matters relating to the *servitium* of their titles and the observance of ecclesiastical discipline, can scarcely be called *jurisdictio quasi-episcopalis.* Ferraris, V. Cardinalis, art. iii., Novae Addit., n. 3.

[46] Craiss., n. 710. [47] Phillips, Lehrb., p. 211.

[48] Ferraris, l. c., art. iii., n. 28, 29. [49] Ib., n. 33.

[50] Phillips, Kirchenr., l. c., p. 236. [51] Craiss., n. 710.

during the lifetime of the Pope—the cardinals form the senate,[52] chapter, or council of the Pope, and upon their advice to the most holy Roman Pontiff the administration of the universal Church depends.[53] II. *Sede vacante—i.e.*, during the vacancy of the Pontifical chair—1, the defence, and, in a measure, the administration, *ad interim*, of the Church, devolve upon them.[54] However, the jurisdiction strictly or properly belonging to the Pontiff, being attached to his person,[55] does not pass to the Sacred College.[56] Hence, the cardinals cannot, *sede vacante*, enact general laws,[57] appoint, confirm, or depose bishops.[58] 2. The faculties of the congregations or permanent committees of cardinals, being ordinary, are consequently perpetual,[59] and do not lapse with the death of the Pope; they should, however, lie dormant during the conclave as to those matters which are of greater importance, and which are, on that account,[60] usually attended to by the cardinals personally, not merely by their secretaries. 3. The right to elect the new Pope belongs exclusively to the Sacred College. Cardinals who are ordinaries of dioceses are bound to proceed to the conclave at the death of the Pope; they must return to their dioceses two months after the election and consecration of the Pontiff.[61]

495.—III. *Insignia of Cardinals.*—These consist chiefly, 1, of the red hat (*galerus rubeus*) given them by Pope Innocent IV. 2. The red cap (*birretum rubrum*) bestowed by Paul IV. 3. The sacred purple, which was the distinctive dress of the emperors; it came to be worn by all the cardinals from the time of Boniface VIII.[62] Only those cardinals who are taken from religious communities retain in their dress the color of their order. Cardinals, however,[63] of the Society

[52] Soglia, vol. i., p. 259. [53] Conc. Trid., sess. xxv., cap. i., d. R
[54] Ferraris, l. c., art. v., n. 23. [55] Ib., n. 30. [56] Soglia, l. c., p. 261
[57] Ib. [58] Ferraris, l. c., n. 24–27. [59] Ib., n. 43. [60] Ib., n. 45–47.
[61] Ib., n. 4. [62] Phillips, Lehrb., pp. 210, 211. [63] Craiss., n. 716

of Jesus dress like secular cardinals. 4. Urban VIII.[64] gave cardinals the title *eminentissimus, eminentia vestra.* The coat of arms of cardinals should be surmounted by a cardinal's hat and fifteen tassels (*flocci*), but not by a secular crown, even though they are members of royal or imperial families.[65]

§ 3. *The College of Cardinals as a Corporation.*

496. The College of Cardinals, like other cathedral chapters, is a corporation,[66] and, as such, has its officers, rights, and duties. Its chief officers are: 1. The *Decanus*[67] *S. Collegii.*—The dean is the head or president of the College of Cardinals.[68] This dignity, upon its vacancy, falls, by what is styled the *jus optandi,*[69] to the oldest of the cardinals, whether he resides in the *Curia* or is absent from it *ex publica causa*[70] (*1*, p. 503). 2. The *Cardinalis Camerarius Sacri Collegii.*—This dignitary administers the revenues of the Sacred College. He is assisted in his duties by several subordinate officials.[71] 3. The *Secretarius S. Collegii.*—He is chosen by vote, and should be an Italian. His substitute (*clericus nationalis*) should be alternately selected from the French, Spanish, English, and German nations.[72] The Sacred College, being the chapter of the Roman Church, does not in every respect fall under the laws that govern other chapters. Thus, it cannot meet without the permission of the Pope,[73] while other chapters, in matters relating to themselves as corporations,[74] are convoked by their dean or president even without the consent of the bishop.[75] Cardinals living in Rome should have a yearly income of four thousand dollars (*scudi*).[76]

[64] Decretum 10 Jun., 1630.
[65] Ib., pp. 233, 238.
[66] Phillips, Kirchenr., vol. vi., p. 282.
[67] Ib., pp. 237, 238.
[68] Ib., p. 233.
[69] Ib., p. 238; cfr. Phillips, Lehrb., p. 212.
[70] Craiss., n. 718.
[71] Phillips, Kirchenr., l. c., p. 252.
[72] Ib. [73] Ib., p. 234.
[74] Phillips, Lehrb., pp. 313, 314.
[75] Our Notes, n. 66.
[76] Phillips, Kirchenr., l. c., p. 237.

§ 4. *Consistories.*

497. *Q.* What is the origin, history and meaning of consistories?

*A.* 1°. Formerly, namely, from the tenth to the sixteenth century, the Roman Pontiffs were wont to gather about them in regular weekly meetings all the cardinals, and to discuss and transact with them the entire business of the Catholic world.[77] These meetings were called consistories, and were held regularly three times a week at the Papal palace, and under the immediate presidency of the Pope himself. At these consistories, controverted questions on faith, morals, ecclesiastical discipline were discussed and decided; criminal and disciplinary and other contentious causes were heard and adjudicated with judicial formalities, the litigants and their advocates being present. The Pope himself always gave the decision, after having taken the advice of the cardinals.[78] Besides these regular consistories, extraordinary ones were held on special occasions. Thus Pope Clement V. held an extraordinary, public consistory for the purpose of ratifying the election of the Emperor Henry.[79]

2°. Although the ordinary consistories were held three times a week, yet it was found impossible to expedite the constantly increasing business of the Catholic world at them.[80] Hence, in the sixteenth century, the cardinals who had up to that time discharged the affairs of the Church only in these general meetings, where they acted as a committee of the whole, were divided up into various special committees, to each of which a special kind of business or a particular sphere of action was assigned. These committees were, and are still, called Congregations of Cardinals. Consequently the affairs which had formerly been transacted in

[77] Analecta, Jur. Pont., A.D. 1857, p. 2236.

[78] Bangen, the Roman Curia, p. 75.

[79] Clem., 1 de Jurej. (ii. 9).

[80] Analecta Jur. Pont., l. c., p. 2239.

consistories, or the general sessions of the whole college of cardinals, are now divided up and expedited by the various committees, each of which consists of a certain definite number of cardinals, officials, and consultors. Hence consistories, both ordinary and extraordinary, came to be held much more rarely than in former times. With two or three exceptions, these congregations are presided over, not by the Pope himself, but by one of the cardinals, who is called the Prefect of the Congregation. From what has been said, it will be seen that consistories may be likened to our National Congress or to a State legislature, sitting as a whole body; while the Sacred Congregations resemble the various committees appointed by each Congress or State legislature, at the beginning of the session, to each of which committees a special class of business is assigned.

*Q*. What is to be said of consistories at the present day?

*A*. The establishment of the various commissions of cardinals has not, however, done away altogether with consistories. The latter are still convened from time to time, as occasion requires, and are, at the present day, of two kinds: 1, ordinary or secret, at which only cardinals are present; 2, solemn or public, to which the cardinals proceed in great pomp, and to which bishops, prelates, ambassadors, etc., are also admitted.[81] What matters are now disposed of in ordinary consistories? Chiefly these: 1. The appointment of new cardinals. Sometimes the Pope announces *all* the names of those whom he wishes to appoint. Not infrequently, however, he keeps the names of *some* of them secret. Cardinals whose names are thus kept secret are termed *riservati in petto*. 2. The appointment of bishops, the conferring of the pallium, and the transfer of bishops; the erection, union, and division of dioceses. 3. Important questions affecting the relations of the Church and the State. How-

[81] Salzano, lib. i., pp. 77, 78.

ever, all these matters are fully prepared by a special committee, called *congregatio consistorialis*, before they are brought up in the consistory. Ordinary consistories are now held, not regularly, but only at the pleasure of the Pope, as occasion demands. Sometimes none is held for months.[82]

What is done at the present day in public or extraordinary consistories? 1. The imposing of the red hat upon new cardinals; 2. The issuing of the solemn final decree or resolution concerning the canonization of a servant of God; 3. The solemn reception of temporal rulers, or of their ambassadors. These solemn consistories are held at present, like the ordinary ones, only at the pleasure of the Pope, as occasion may require.[83]

### Art. II.

#### *Of the Congregations of Cardinals—Sacrae Congregationes.*

☞ 498. *Q.* What is meant by the Sacred Congregations of Cardinals?

*A.* We have just seen that down to the sixteenth century the cardinals discharged the affairs of the Church in general meetings, where they acted as a committee of the whole; that in the sixteenth century they were divided up into various committees, to each of which a particular kind of business was assigned.[84] These committees were, and are still, called Congregations of Cardinals.

*Q.* How many kinds of Sacred Congregations are there?

*A.* 1°. They are divided into (*a*) *permanent* committees, or those which are permanently established, (*b*) and *temporary*, or those which are specially appointed to attend to some transient matter only.

2°. Both the permanent and temporary Sacred Congregations are subdivided into those which expedite affairs pertaining to the Pope (*a*) as Bishop of the city of Rome; (*b*) as temporal ruler of the Papal States; (*c*) and as head of the

[82] Bangen, l. c., p. 76. [83] Ib.

[84] Analecta, Jur. Pont., A.D. 1857, pp. 2264 sq.

entire Church.[85] 1. As Bishop of Rome, he is assisted by the *S. Congr. Visitationis Apostolicae*, which attends to all matters pertaining to the diocese of Rome. 2. As temporal sovereign of the States of the Church, he is aided by the *Congr. Super Consultatione Negotiorum Status Ecclesiae*, which directs both the internal affairs and the external relations of the Pontifical States. 3. Finally, as head of the entire Church, he is assisted by twelve standing congregations,[86] of which we shall now speak.

*Q.* What is the *personnel* of the various congregations?

*A.* Each of the Sacred Congregations is composed of several cardinals, and as a general rule has a cardinal-prefect and a secretary, both of whom are appointed for life. A bishop *in partibus*,[87] or other prelate, generally fills the office of secretary. The precise number of cardinals attached to each congregation depends at present on the will of the Pope.[88] The *Congregatio Sancti Officii* alone has no cardinal, but the Pope, as its prefect.[89] Moreover, all congregations, save the *Congr. Concilii*, have their counsellors (*consultores*), theologians, and canonists, who are appointed by the Holy Father for life.[90] The *Congr. Episc.* had no *consultores* down to the year 1834, in which year some were also attached to this congregation.[91]

### § 1. *The Congregatio Consistorialis.*

499. The scope of this congregation is to fully prepare all matters that are to be discussed and decided in consistories.[92] This committee was established by Pope Sixtus V., has from eight to twelve cardinals, and is usually presided over by the Pope himself.[93]

[85] Phillips, K. R., vol. vi., p. 675.
[86] Ib., p. 676.
[87] Ib., p. 567.
[88] Ib., p. 565.
[89] Ib., p. 566.
[90] Ib., p. 567.
[91] Salzano, lib. i., p. 77.
[92] Ib.
[93] Phillips, Lehrb., p. 217, and Kirchenr., vol. vi., p. 580.

### § 2. *The Congr. S. Inquisitionis or S. Officii.*

500.—I. This congregation is charged with the investigation and suppression of current heresies. At first this congregation, as established by Pope Paul III. (1542), was but a temporary committee; its present form,[94] as a standing congregation, was given it by Sixtus V.[95] II. The powers of the S. Inquisition (*sanctum officium*), as determined by Pope Sixtus V.,[96] are chiefly: 1. "Inquirendi, citandi, procedendi, sententiandi et definiendi in omnibus causis, tam haeresim manifestam quam schismata, apostasiam a fide, magiam, sortilegia, sacramentorum abusus concernentibus"; 2, "non solum in urbe [*i.e.*, Roma] et statu temporali S. Sedi subdito, sed etiam in universo terrarum orbe, super omnes patriarchas, archiepiscopos et alios inferiores ac inquisitores."[97] III. This committee is made up of a number of *cardinals;* of a *commissarius sancti officii,*[98] who presides at trials as ordinary judge; of an *assessor sancti officii,* who reports cases under consideration to the full committee; of counsellors[99] (*consultores*), chosen by the Pope himself from among the most learned canonists and theologians; of the *promotor fiscalis—i.e.*, the prosecuting attorney;[100] of the *advocatus reorum,* or defendants' counsel. The General of the Dominicans, the *magister sacri palatii,* also a Dominican, and a theologian of the Order of Conventuals, are its counsellors by virtue of their position (*consultores nati*). IV. Two preparatory sittings or congregations are held weekly: one on Monday, the other on Wednesday.[101] The principal congregation or meeting of the full committee, where final decisions in matters under discussion are announced, takes place every Thursday in the presence of the Pope, who is

[94] Phillips, Lehrb., p. 217.
[95] Walter, pp. 262, 263; cfr. Salz. l. c., p. 79
[96] Const. *Immensa.*
[97] Ap. Craiss., n. 724.
[98] Salzano, l. c.
[99] Walter, p. 263.
[100] Phillips, Kirchenr., l. c., pp. 590–592.
[101] Craiss., n. 725. 726.

the prefect of this congregation.[102] V. Formerly there existed also, in the various parts of the Catholic world, local tribunals or courts of inquisition,[103] subject to that of Rome, as also local inquisitors; but at present[104] these local tribunals are everywhere abolished, even in Spain.[105] The *S. Officium*, however, of Rome, or the Universal Inquisition, has not lost in importance, and still has charge of all that relates more directly to religion or the purity of faith; from it emanate censures of propositions and the like.[106]

### § 3. *The Congr. Indicis—The "Imprimatur" in the United States.*

501. The task of examining books and making a list (*index*) of those which, upon examination, had been prohibited, was at first entrusted to the *S. Congr. Inquisitionis.*[107] As, however, this committee, owing to its other duties, was unable to properly attend to this matter, Pope Pius V., in 1571,[108] established the *Congr. Indicis*, whose special and almost sole duty was to examine books that were to be either proscribed, emended, or permitted.[109] Books against faith and morals are at present examined and condemned almost exclusively by this congregation.[110] It is composed of several cardinals, one of whom is prefect; of the *magister sacri palatii*, the permanent assistant of the prefect; of counsellors and relators.[111]

502. *Rules of the Index* (*Regulae Indicis*).—According to the ten rules of the Index drawn up by a committee of the Fathers of the Council of Trent, and approved and published by order of Pope Pius IV.[112] and later Pontiffs,[113] some books are prohibited *absolutely;* others but con-

[102] Phillips, l. c., p. 592. [103] Ib., p. 585. [104] Craiss., n. 723.
[105] Salzano, l. c., p. 79. [106] Ib. [107] Craiss., n. 727.
[108] Phillips, Kirchenr., vol. vi., p. 612. [109] Ib., Lehrb., p. 219.
[110] Our Notes, n. 402. [111] Phillips Kirchenr., l. c., p. 611.
[112] Const. *Dominici* A.D. 1564. [113] Cfr. Reiff., lib. v., tit. vii., n. 117

ditionally or *sub clausulis.* I. These are *absolutely* forbidden: 1. All books which were already prohibited prior to the year 1515 by Popes and oecumenical councils.[114] 2. *All* the writings of heresiarchs, and those books of other heretics which treat *ex professo* of religion.[115] 3. Also obscene books.[116] and those which treat of astrology,[117] sortilegy, and the like. 4. Finally, all books placed on the *Index*, without any observations. II. The following books are prohibited *conditionally* (*sub clausulis*)—*i.e.*, until examined and approved in the proper manner (*donec approbati fuerint*):[118] 1. Those books and writings of heretics which do not treat *ex professo* of religion.[119] 2. Bibles published in the vernacular without the approbation of the Holy See,[120] or without annotations taken from the holy fathers[121] or from learned Catholic writers.[122] For other rules, see Phillips.[123] The prohibition of books by the *S. Congr. Indicis*[124] includes the reading and keeping, the defending and publishing, of such works.[125] III. The law of the *Index*[126] furthermore enacts that no book or writing of any kind shall be published without the approbation of the ordinary of the diocese where the book is published. From this we infer: 1. The approbation is to be given, not by the ordinary of the *author*, but of the *place* where the book is published.[127] 2. The law of the *Index* is more sweeping in its restrictions than the Council of Trent.[128] The latter requires the approbation of the ordinary only for books treating *de rebus sacris;* the former for *all* books or publications.[129] This law of the *Index*, however, so far as its unlimited application is concerned, seems at present to be universally in abeyance; for, even in Catholic countries,

[114] Regula I., ap. Reiff., l. c., n. 111. [115] Regula II. [116] Regula VII.
[117] Regula IX. [118] Phillips, l. c., pp. 613, 614. [119] Regula II.
[120] Regula IV. [121] Craiss., n. 737. [122] Cfr. Conc. Pl. Balt II., n. 16.
[123] L. c. [124] Reiff., lib. v., tit. vii., n. 35, 7. [125] Konings, n. 1702
[126] Regula X. [127] Craiss., n. 743. [128] Sess. iv., de Edit. libr.
[129] Bouix, De Jure Regular., vol. ii., pp. 146, 147.

where the *Rules of the Index* are in force, only such books at most as treat *de rebus sacris* are submitted to ordinaries before publication. We say, *at most;* for not only throughout the United States, but also in Catholic countries,[130] such books as treat *de rebus sacris* are now often published without the approbation of ordinaries. Note, it is important to know the *Rules of the Index;*[131] for the *S. Congr. Indicis* examines and passes judgment on books according to these rules.[132]

503. *Q.* Are the *Rules of the Index* and the decrees of the *S. Congr. Indicis* obligatory *sub gravi* throughout the entire Church?

*A.* They are; for various Roman Pontiffs have time and again declared the law of the Index to be binding on *all* the faithful. Thus, Benedict XIV.[133] enacts: "Indicem ab *omnibus et singulis personis, ubicunque locorum existentibus,* inviolabiliter et inconcusse observari praecipimus."[134] There are some, indeed, who affirm that the Index is not binding, at least in part, where it has not been received, or where it has been abrogated by custom to the contrary.[135] Reiffenstuel and Phillips[136] answer very properly that just laws, such as those of the Index, in order to be binding, need not be accepted; nay, that subjects commit sin by refusing, without a sufficient cause, to accept a just law.[137] As to customs abrogating the law of the Index, Reiffenstuel[138] very justly points to the fact that, so far from being tolerated by the Roman Pontiffs, these customs have been expressly and repeatedly condemned by them, and are therefore abuses. Thus Benedict XIV., after having, as we have seen, declared that the Index binds everywhere, expressly adds:

[130] Cfr. Craiss., n. 764.
[131] Cfr. Phillips, l. c., p. 612.
[132] Reiff., l. c., n. 99–110.
[133] *Const. Quae ad Catholicae,* ann. 1757.
[134] Ap. Phillips, l. c., p. 618, note 34.
[135] Reiff., lib. v., tit. vii., n. 113.
[136] Kirchenr., vol. vi., p. 618.
[137] Cfr. Supra, n. 30.
[138] L. c., n. 117; cfr. n. 90.

"Non obstantibus usibus, stylis et consuetudinibus etiam immemorabilibus, caeterisque in contrarium facientibus quibuscunque." In all subsequent editions of the Index issued by Papal authority down to the year 1841 the brief of Benedict XIV. containing this clause was retained.[139] Pope Leo XII., in his mandate of March 26, 1825, urges upon bishops the obligation of enforcing the rules of the Index. Lastly, Pope Gregory XVI., in his encyclical letters of March 6, 1844, ordains: "Standum esse generalibus regulis et decretis quae Indici librorum prohibitorum praeposita habentur." [140]

504. From what has been said it follows that the Rules of the Index and the decrees of the *S. Congr. Indicis* are *per se* obligatory everywhere, and therefore also in the United States.[141] We say, *per se;* for, considering the fact that not only with us, but even in European countries—*v.g.*, Germany and France—these rules are not, and, owing to the times in which we live, cannot, perhaps, be observed in all their rigor, it may perhaps be presumed that the Sovereign Pontiff does not wish to urge their full observance, and that consequently the faithful are excused from the more rigorous observance of each and every Rule of the Index.[142]

505. The Second Plenary Council of Baltimore thus calls attention to the general law of the Church:[148] "Jam vero Ecclesiae lege, libri ad religionem et Dei cultum spectantes sine Ordinarii approbatione praelo committi vetantur; quod si, Episcopo inconsulto aut invito, in lucem prodierint, eorum lectione est abstinendum. Quod omnibus in memoriam hoc decreto revocavit C. Balt. I.:[149] Quoniam multa incommoda jam orta sunt, et in posterum oritura videntur, ex eo quod in diversis hujus provinciae (Regionis) dioecesibus di-

[139] Craiss., n. 731. [140] Prael. S. Sulpit., tom. i., p. 175. Parisiis, 1875.

[141] As to the faculties of our bishops in this matter, see Facult., form i., n. 21; Fac. Extr. C., n. 2. [142] Prael. S. Sulpitii, l. c., p. 174.

[148] Cfr. Konings, n. 1707, q. 2. [149] Prov. i., n. 33.

versi *catechismi et libri precum* adhibeantur, privata auctoritate editi, . . . moneant (Episcopi) fideles ut a *precum libellis*, qui sine Ordinarii approbatione . . . in lucem editi circumferuntur, abstineant."[150] Again it enacts: "Ut" (Episcopi, in quorum dioecesibus sint praela aut typographea Catholica) "in suis quisque dioecesibus unum aut plures sacerdotes[151] . . . designent, qui examini subjiciant *libros precum*, aut aliter *ad religionem* pertinentes, priusquam ab Ordinario . . . approbatione fidelibus commendentur."[152] As to the censures incurred for violating the Rules of the Index, see Craisson[153] and the Constitution *Apostolicae Sedis* of 1869.[154]

## § 4. *The Congregatio Concilii.*

506.—I. The Council of Trent left to the Sovereign Pontiff the care of enforcing and interpreting its enactments[155] wherever anything should be met with requiring explanation or definition.[156] For this purpose Pope Pius IV. (1564) established the *Congr. Cardinalium Concilii Tridentini Interpretum.*[157] II. This committee had, in the beginning, only power to see to the execution or observance of the Tridentine disciplinary laws—*i.e.*, decrees on reform.[158] It was empowered by Pope Pius V. to interpret definitively the Council of Trent in all cases where the congregation was not in doubt as to the meaning of the Council.[159] Finally, Sixtus V. gave this committee *general* powers to interpret the Tridentine decrees on reformation. Now, the decrees of Trent include, so to say, the entire code of ecclesiastical jurisprudence. Hence, this congregation has power to explain authoritatively all canon law; moreover, in matters of discipline, it has not only judicial but legislative authority

[150] C. Pl. Balt. II., n. 502.
[151] C. Pl. Balt. I., n. 8.
[152] C. Pl. Balt. II., n. 503.
[153] N. 760.
[154] N. 2; Craiss., n. 1641.
[156] Salzano, lib. i., p. 85.
[155] C. Trid., sess. xxv., c. xxi., d. R.
[157] Phillips, Lehrb., p. 219.
[158] Cfr. ib., p. 220.
[159] Cfr. ib., Kirchenr., l. c., pp. 625–636.

over the entire Church,"[160] being empowered to make such laws as are deemed opportune."[161] We said above, *Tridentine decrees on reformation;* for the interpretation of the Tridentine decrees *in matters of faith* is reserved to the Pope.[162] III. *Personnel of this Congregation.*—It has a greater number of cardinals than the other congregations. A prelate, generally an archbishop in partibus, is its secretary.[163] This committee has these three sub-committees: 1. *The Congr. Visitationis liminum,* which receives the reports on the state of dioceses, both as sent to Rome or as made personally by bishops when visiting Rome.[164] 2. *The Congr. particularis super revisione synodorum provincialium.* A number of consultors are attached to this special committee; though, as we have said, no consultors are attached to the S. C. Concilii itself. Both these sub-committees are presided over by the cardinal-prefect of the full committee (*Congr. Concilii*), and have the secretary also of the latter.[165] 3. *The Congr. particularis super residentia Episcoporum.*

§ 5. *The Congregatio de Propaganda Fide, its relations to the United States.*

507. This congregation was established by Gregory XV.[166] and consists of a number of cardinals, one of whom acts as prefect; of a secretary, who is always one of the most esteemed prelates; of the *assessor sancti officii;* of twenty-four counsellors and many subaltern officials.[167] This congregation has entire and exclusive charge of the ecclesiastical affairs of missionary countries. New missions are established and districted by it. As a rule,[168] a mission is first entrusted to a simple priest, as *praefectus apostolicus.* When the mission is farther advanced, a *vicarius apostolicus* is appointed; he is made bishop or archbishop *in partibus*

[160] Phillips, l. c., pp. 634, 635. [161] Craiss., n. 769.
[162] Ib., n. 769. [163] Analecta, J. P., A.D. 1857, p. 2387. [164] Ib., p. 638.
[165] Ib. [166] Const. Inscrutabili, 22 Jan., 1622.
[167] Phillips, vol. vi., p 668 [168] Ib., pp. 669, 670; cfr. Craiss., n. 780.

Sometimes a fixed place of residence is assigned him; yet a diocesan organization, canonically complete, is not thereby effected. Hence, such a bishop remains an auxiliary bishop of the Pope. For that reason, also, missionary bishops are not appointed in consistory, but on the nomination of the Propaganda.[169] With us, the consultors and irremovable rectors on the one hand, and the bishops of the province on the other, recommend to the Propaganda three candidates when a bishopric becomes vacant.[170] Countries are considered missionary and remain under the Propaganda[171] so long as the organization of their dioceses is incomplete[172]—*i.e.*, not in every respect conformable to canon law—*v.g.*, if chapters do not exist;[173] in other words, until canon law fully obtains in them.

508. *Powers of the Propaganda.*—Dioceses may be incomplete as to their organization chiefly in two ways: 1, some dioceses are as yet in the course of organization[174]—*v.g.*, dioceses in the United States; 2, others which, though once fully organized, became disintegrated by the inroads of schism or heresy in countries once Catholic. Wherever the organization or form of government of a diocese is not and cannot be made *entirely* conformable to canon law,[175] its administration devolves directly on the Pope, who has *jurisdictio ordinaria* in every diocese.[176] Now, the Sovereign Pontiff manages the affairs of missionary countries through the *Congr. Prop. Fidei.* Hence, this committee has exclusively the direction of ecclesiastical affairs respecting missionary countries. We say, *exclusively;* that is, the Propaganda is for missionary countries what all the other congregations combined are for countries where dioceses are perfectly organized, having chapters, etc. While, therefore, ecclesiastical matters from canonically-organized dic-

[169] Phillips, vol. vi., p. 670.

[170] Conc. Pl. Balt. II., n. 106.

[171] Phillips, Lehrb., p. 223.

[172] Cfr. ib., § 126, p. 235.

[173] Cfr. Phillips, Kirchenr., l. c., p. 663.

[174] Ib., Lehrb., p. 235.

[175] Ib.; cfr. ib., p. 223.

[176] Cfr. ib., Kirchenr., l. c., p. 663.

ceses must be referred to the respective congregations having charge of the specific affair, those from missionary countries must be referred *exclusively* to, and are arranged *solely* by, the Propaganda. Hence, of this congregation it is said: *Caeteras congregationes habet in ventre*[177]—*i.e.*, for missionary countries the Propaganda is the *sole* congregation, combines in itself the powers and discharges the duties or functions not merely of several, but of all the other congregations; so that while the priests and bishops of countries where canon law obtains must refer matters to the respective congregations, the priests and bishops of missionary countries must, *in all cases*, address themselves to the Propaganda, but to no other congregation. Thus, this committee is for missionaries the exclusive court of appeal in all cases of dispute; it alone solves questions proposed to the Holy See by missionaries. *Observation.*—From what has been said we infer: All priests or bishops in the United States having recourse to Rome, whether for the sake of appealing—*v.g.*, from alleged acts of injustice on the part of bishops—or by way of asking for faculties or decisions in controverted matters—in a word, in all cases—must address themselves to the Propaganda, and to no other congregation (*x*, p. 503).

509. In the seminary attached to the Propaganda[178] young men of every nationality are educated for the various missions of the world. In the printing-office attached to the Propaganda books are published in every language for the use of missions. The full committee (*Congr. generalis*) meets once a month,[179] on a Monday. The meeting is generally held in the Propaganda; sometimes in the presence of the Pope. The sub-committee, composed of the cardinal-prefect, secretary, and several subaltern officials,

[177] Phillips, l. c., p. 663.

[178] This seminary is named *Collegium Urbanum*, after Pope Urban VIII., who established it. Craiss., n. 781.

[179] Phillips, l. c., vol. vi., p 668.

meets once a week in the house of the cardinal-prefect; it attends to matters of minor importance, reserving those of a graver character to the full committee.[180] Pius IX.[181] divided the Propaganda into two parts: one, *pro ritu latino;* the other, *pro ritu orientali.*[182]

## § 6. *The Other Congregations.*

510.—I. *The Congr. super Negotiis Episcoporum et Regularium.*—I. Though originally two distinct congregations,[183] the *Congr. Episcoporum* and the *Congr. Regularium* were soon united into one, probably[184] already by Sixtus V.[185] II. *Powers of this Congregation.*—It has charge of all matters whatever relating to bishops (*omnia negotia episcoporum*) or religious communities (*negotia regularium*); it settles disputes between bishops and their subjects, as also between bishops and religious communities.[186] It has, in fact, jurisdiction in all matters, save those which relate to dogmas or require the interpretation of the Council of Trent;[187] hence it is termed *congregatio universalis.* Its personnel is similar to that of other congregations. III. *Mode of procedure.*—In deciding cases referred to it[188] this committee proceeds either judicially, though summarily, or extrajudicially, according as the matter is of a contentious or voluntary character.[189] When a question of dispute—*v.g.*, between a bishop and a parish priest—is brought before this committee, its usual course is to write to the bishop against whom the complaint is lodged, or, if he fails to furnish a satisfactory report, to the metropolitan, to a neighboring bishop, or also to other trustworthy persons, for a statement of the case. Upon receipt of such statement the committee proceeds to discuss

[180] Phillips, vol. vi., p. 668.
[181] In 1862, Jan. 6.
[182] Craiss., n. 782.
[183] Ib., n. 770.
[184] Phillips, vol. vi., p. 642.
[185] Const. Immensa Aeterni, A.D. 1587.
[186] Phillips, l. c., pp. 645, 646.
[187] Ib., pp. 640, 643.
[188] Ib., p. 644.
[189] Salzano, lib. i., p. 86; Santi, Prael. l. 1, t. 31, n. 59, 86.

and settle the case.[190] The decision reached is communicated to the bishop,[191] either directly or through some neighboring prelate. In matters relating to religious communities the procurator-general of the respective religious order is applied to for information as to the case.

511.—II. *The Congr. Sacrorum Rituum.*—This committee, which was established by Sixtus V.,[192] is empowered: 1. To prevent anything superstitious from getting into the ceremonies or liturgy of the Church. 2. To bring about uniformity of worship by enforcing the ordinance of Pius V.—to wit: That the ceremonial of the Roman Church,[193] especially as regards the Mass, the office, and the administration of the sacraments, should be observed by all the other churches of Christendom. 3. Hence, to correct the missal, breviary, pontifical, ritual,[194] and ceremonial. 4. To conduct the proceedings respecting the canonization of saints.[195]

512. *Q.* What is the force of the decrees and decisions of the *Congr. S. Rituum?*

*A.* There are two kinds of decrees: some, and by far the greater number, are *particular*, being in the form of answers to individuals or particular churches; others are *general*, either *expressly*—*v.g.*, when addressed *urbi et orbi*[196]—or *aequivalenter*—*v.g.*, when explanatory of general rubrics: *e.g.*, those in the beginning of the Missal or Breviary.[197] Now, all decrees which are expressly general are obligatory everywhere; decrees which are general *aequivalenter* also bind universally, provided they are *declarationes comprehensivae*.[198] As to particular decrees, it is certain that they have the force

[190] Salzano, lib. i., p. 86.

[191] Phillips, l. c., pp. 646, 647.

[192] *Bulla Immensa Aeterni;* cfr. Bened. XIV., *De Servorum Dei Beatif.*, etc. cap. xvi.–xix.

[193] Salzano, l. c., p. 87.

[194] Phillips, l. c., p. 654.

[195] Ib.

[196] Craiss., n. 775; cfr. supra, n. 77, 78, 81.

[197] O'Kane, Notes, n. 29.

[198] Cfr. supra, n. 79.

of law for those for whom they were given; but are they also binding on *all*—*i.e.*, are they obligatory also *in casibus similibus?* Here a distinction must be made between those particular decrees which, though particular in form, are nevertheless [199] general and applicable everywhere, in substance and intent, and those which are particular, in an exclusive manner—*i.e.*, not only in form, but also in intent: *v.g.*, those that imply a dispensation or privilege, or are given on account of special local circumstances. Now, it is certain that the latter are binding [200] only in the particular cases for which they are made; whether the former are universally binding is a disputed question. St. Liguori [201] seems inclined to the opinion that they are not; but he afterwards modifies this opinion by adding that, when such decrees are universally known, and are thus, in fact, promulgated by long usage and the constant reference of authors to them, they are binding on all.[202] Note, however, it is certain that, when particular decrees are solemnly promulgated to the entire Church, they become binding on all.

513.—III. *The Congr. Indulgentiarum et Reliquiarum* was made a standing congregation by Clement IX.[203] Its duty consists, 1, in preventing abuses in the matter of indulgences, etc.; 2, in authenticating relics, especially those taken from the Catacombs of Rome.[204] For the remaining congregations, see Craisson.[205]

514. *The Congregations in general.*—In conclusion, we add a few words on the rights, etc., common to all the congregations. I. All congregations have *jurisdictio ordinaria* [206] in their respective spheres—*i.e.*, in matters entrusted to their

[199] Cfr. O'Kane, l. c., n. 29.
[200] Cfr. Konings, n. 173, quaer. 4.
[201] Lib. i., n. 106, quaer. 2.
[202] O'Kane, l. c., n. 35.
[203] Const. *In Ipsis*, 1669 (B. M., tom. vi., p. 283).
[204] Phillips, l. c., p. 661.
[205] L. c., n. 783 seq.
[206] Phillips, l. c., p. 569.

cognizance—by their mandates or commissions; nay, they constitute one and the same tribunal with the Sovereign Pontiff; hence, there is no appeal from them to the Pope.[207] They resemble, in their powers, the vicar-general of a diocese. They are in fact the vicars-general of His Holiness for the entire Church, just as the Cardinal Vicar of Rome is the Pope's vicar-general for the diocese of Rome. Their jurisdiction does not lapse with the death of the Pope; yet it should, so to say, lie dormant during the vacancy of the Papal chair.[208] For the cardinals should, during such vacancy, apply themselves chiefly and almost exclusively and without any delay to the election of a new Pope. Hence they should not do anything else, although they can provide for urgent cases brooking no delay. Consequently they have not the powers of a cathedral chapter or of a diocesan administrator, *sede vacante*.[209]

Thus Pope Innocent III. (1243–1254) decrees: "Iidem quoque cardinales accelerandae provisioni (electioni S. Pontificis) sic vacent attentius, quod se nequaquam de alio negotio intromittant, nisi forsan necessitas adeo urgens incideret, quod eos oporteret de terra ipsius ecclesiae defendenda vel ejus parte aliqua providere, vel nisi aliquod tam grande et tam evidens periculum immineret, quod omnibus et singulis cardinalibus praesentibus concorditer videretur illi celeriter occurrendum."[210]

Pope Clement V. (1305–1314) confirms the above and annuls all acts of the cardinals done to the contrary. His words are: "Irritum et inane decernentes, quidquid potestatis aut jurisdictionis ad Romanum, dum vivit, Pontificem pertinentis (nisi quatenus in constitutione praedicta—i.e. cap. 1 de elect. in 6°, permittitur), coetus ipse (Cardinalium) duxerit, eadem vacante ecclesia (Romana) exercendum."[211]

[207] Craiss., n. 785.
[208] Phillips, K. R., vol. vi., p. 570.
[209] Schulte, K. R., vol. i., p. 102.
[210] Cap. 1 de elect. in 6° (i. 6).
[211] Clem. cap. 2, de Elect. (i. 3).

II. *Forms used by the various Sacred Congregations in deciding matters.*—The Sacred Congregations, being the supreme tribunals of the Church, do not, in giving a decision, set forth the reasons upon which it is based. They render their decisions sometimes in one word, such as *affirmative*, and sometimes in short phrases. We shall now briefly explain these words and clauses.

Some of the resolutions of the Sacred Congregations are such as put off the decision for further examination; others are such as contain the decision rendered. The former are given in the following forms: 1. *Non proposita;* that is, the matter could not be decided in the session, owing to the fact that the session was finished before it was reached. Such deferred matters are usually the ones first taken up in the next session. 2. *Iterum proponatur;* that is, the matter or case was indeed discussed in the meeting of the Sacred Congregation, but, the opinions of the cardinals being divided and the matter not being altogether clear, no decision was arrived at, and the matter is therefore to be brought up again at the next session. 3. *Dilata*, which means that the matter was indeed discussed, but that a substantial act or proof is missing or wanting, and that the case is therefore put off to a future session. Sometimes the decision is *dilata et coadjuventur probationes.*

The resolutions which contain a decisive answer are usually given in these forms: 1. *Affirmative* or *negative;* that is, the case is decided affirmatively or negatively and unfavorably. 2. Sometimes to these words is added the clause *et amplius*, which means that the case or matter has been fully and completely discussed and decided unanimously, and therefore will not be reconsidered by the Sacred Congregation, nor the favor of a new hearing granted, except by special concession of the Holy Father or of the Sacred Congregation. Here we observe that when the decision is simply *affirmative* or *negative* a new hearing (*beneficium novae audientiae*) be-

fore the same Congregation which gave the decision is granted, as a matter of course, upon the application of the losing party, made within ten days after the decision was rendered."[212] 3. *Non expedire*, which is a mild way of refusing a request. 4. *Lectum* or *relatum*; that is, the request was read in the meeting, but was not admitted. 5. *Reponatur*; that is, no answer is given, but yet the papers or the requests are to be placed in the archives of the Sacred Congregation. 6. *In decretis* or *in decisis*, which means that a previous decision rendered in a case by the Sacred Congregation, against which a new hearing or reopening of the case has been granted, is reaffirmed. When, in the new hearing, the Sacred Congregation reverses its first decision, it does so in these words: *recedendum a decisis*, etc. 7. Sometimes to the decision are added the words *ad mentem*, which signify that the Sacred Congregation modifies the decision in accordance with the principles of equity. At times this *mens* is explained with the decision in the words *mens est*, etc. At other times the *mens* is not thus explained and published by the Sacred Congregation, but is merely sent to the ordinary who is charged with carrying out the decision.

III. *General manner in which the Sacred Congregations dispose of ecclesiastical affairs.*—Before all else, it should be borne in mind that the Sacred Congregations are tribunals of the Holy See for the *external* government of the Church, and consequently only for matters which pertain to the *external forum*. Hence when applications are made to them the real names and surnames of the parties are always to be stated. All matters which belong to the *forum internum* should be brought before the Sacred Penitentiary; here the fictitious, not the real, names of the parties for whom something is asked are given.

Next we must distinguish between *extrajudicial* or non-contentious and *judicial* or contentious affairs. With regard

[212] S. C. EE. et RR., 1835, art. 14; 1834, art. 13; Bangen, l. c., p. 175.

to extrajudicial matters, or those about which there is no contention between parties, they are either of considerable importance or not. The less important non-contentious matters—*v.g.*, indults which do not affect the rights of third parties—may be and are usually expedited by the cardinal prefect and secretary, or by the secretary alone, of the respective Congregation. But all non-contentious matters of importance, *v.g.*, the approval of the rules of a new religious community, belong to the full Congregation, and cannot, therefore, be transacted by the prefect or secretary.

So far as concerns judicial or contentious matters, *v.g.*, an appeal from the decision of a bishop, they cannot be terminated by the cardinal prefect and the secretary, but must be brought before the full Congregation, and adjudicated in a judicial though summary manner, in a plenary meeting of the respective Sacred Congregation, held generally once every month. We say, *judicial manner;* that is, the parties agree upon the *dubia* which form the *litis contestatio;* present their arguments in writing, etc.

As a rule, in the full monthly meetings of the various Sacred Congregations, the secretary of the respective Congregation reports on the cases or matters to be decided; that is, he presents to the assembled cardinals an impartial summary statement of each case (*restrictus facti et juris*), together with the arguments *pro* and *contra;* reads extracts from the documents submitted by the parties, etc. We say, *as a rule;* for in some of the Sacred Congregations, *v.g.*, in that of bishops and regulars, a cardinal is always appointed in contentious non-criminal causes, *ut videat et referat;* that is, to prepare the case beforehand, and to report on it in the full monthly meeting of the Sacred Congregation."[313]

In regard to applications addressed to any of the Congregations, the rule is that letters should not be sent directly by mail, but must be presented in the office of the secretary

[313] Bangen, Rom. Curia, pp. 173, 196; Phillips, K. R., vol. vi., p. 573.

of the respective Congregation by an agent (*agens*) or other person, who will also call for the answer. We say, *the rule is;* because, especially at present, letters may be and often are sent to and answered by the Sacred Congregations directly by mail.

## Art. III.

### *Of the Roman Tribunals.*

515. By Roman tribunals we here mean certain bureaus or boards, which are distinct from the Sacred Congregations of Cardinals, and through which the Pope transacts certain affairs of the Church. These departments are composed mainly of prelates and ecclesiastics who are not cardinals, though, as a rule, they are presided over by one of the cardinals, as their chairman or president. Since the establishment and development of the Sacred Congregations of Cardinals these boards—or at least some of them—have gradually lost the greater part of the power they formerly possessed. For a considerable share of their former authority is now exercised by the Sacred Congregations, which are commissions entirely composed of Cardinals.

516. The tribunals of the Roman Curia are of three kinds: 1, tribunals or courts of justice, for the adjudication of *contentious* matters (*tribunalia justitiae*); 2, tribunals or departments for the granting of favors and the arranging of non-contentious affairs (*tribunalia gratiae*); 3, tribunals for the expedition of Papal letters and documents (*tribunalia expeditionalia*).

### §1. *Roman Tribunals of Justice.*

517. *Q.* Which are the Roman Pontifical tribunals of justice?

*A.* These: I. *The Roman Rota* (*Rota Romana*), so named because its twelve judges (*auditores rotae*) sit in a circle (*rota*) and vote by rotation (*rotatio*) or turns, four only at a time.[114]

[114] Phillips, K. R., vol. vi., pp. 484, 495.

Its origin dates back to the earliest ages of the Church. From the earliest days, Popes referred causes brought before them to referees or auditors for examination and report. These auditors gradually formed a college or association, and began to decide cases as a collective judicial body, called the *Rota*. The latter existed already prior to 1326, as a college of judges, with full Papal authority."[315]

Its jurisdiction as regards the universal Church is at present greatly restricted, being confined to those matters which are specially committed to it by the Pope.[316] This restriction of its powers is due mainly to the establishment of the Sacred Congregations, which now decide nearly all those contentious matters which were formerly adjudicated by the *Rota*.

518. II. *The Apostolic Treasury Department* (*Rev. Camera Apostolica*), which might be compared to the treasury and interior departments of the United States, dates back to the eleventh century (1044), and has charge of the Papal finances, and exercises contentious jurisdiction in financial matters.[317] Formerly it possessed jurisdiction even in criminal matters over the entire Church. Its jurisdiction in the latter respect has now passed to the Sacred Congregations. The *Camera Apostolica* is composed (*a*) of a cardinal, as its head—who is, on that account, called *Camerarius—Camerlengo di Sancta Romana Chiesa*—or chamberlain and treasurer of the Holy See; (*b*) of a substitute, or assistant treasurer; (*c*) of an auditor (*Auditor C. Apostolicae*); (*d*) of a number of prelates.

The powers of the cardinal chamberlain do not expire with the death of the Roman Pontiff, but, on the contrary, become very extensive during the vacancy of the Holy See. For as soon as the Pope dies, he at once takes possession of

[315] Bangen, l. c., p. 297.
[316] Phillips, Lehrb., p. 224; Craiss., Man., n. 798.
[317] Bangen, l. c., pp. 346, 347.

the Papal palace, and obtains complete charge of the Papal household. He conducts all the arrangements for the funeral of the deceased Pontiff. Moreover, he has full charge of the conclave for the election of the new Pope.[318] In a word, during the vacancy he represents the Holy See, and together with three other cardinals, namely, the oldest cardinal bishop, the oldest cardinal priest, and the oldest cardinal deacon, stands at the head of the government of the entire Church. When he appears in public, he is accompanied by the Papal Swiss Guards.[319]

519. III. *The Signatura Papalis Justitiae*, so termed because of the Papal signature (*signatura*) affixed to its acts or decisions, dates back to the earliest ages of the Church. Its referees (*Consiliarii, referendarii*) are mentioned already in 590. In 1484, the *signatura*, which down to that time had decided both contentious and non-contentious matters, was divided by Pope Innocent VIII. into two distinct branches, one for contentious, the other for non-contentious, affairs.[320] The former was called *signatura justitiae*, the latter *signatura gratiae*. Formerly the *signatura justitiae* was possessed, by virtue of its general commission, of jurisdiction in all matters which were of a contentious character, and which were brought before the Holy See from the various parts of the entire Church. But at present, owing to the establishment of the Sacred Congregations of Cardinals, which exercise full jurisdiction in contentious matters, the *signatura justitiae* has almost entirely ceased to exercise the jurisdiction formerly vested in it. It consists of a cardinal, as prefect; of thirty or more prelates, as referees, of whom, however, only twelve have a vote, and are therefore called *praelati votantes*.[321]

[318] Clem. XII., Const. *Ad Perpetuam*, 1732; Bangen, Rom. Curia, pp. 349, 353.

[319] Phillips, K. R., vol. v., p. 728; vol. vi., pp. 407, 416.

[320] Bangen, l. c., p. 374.

[321] Phillips, Lehrb., p. 225.

### § 2. *Tribunals of Grace.*

520. *Q.* Which are the Papal tribunals of grace or favors?

*A.* The following: I. *The Datary* (*Dataria*), which is so called from the fact that Papal concessions or favors—such as appointments to parishes—were carefully *dated*, and the *date* registered by an official of the Pontifical court, in order to prevent litigation among the parties. Its origin dates back to the thirteenth century.[332] It is the organ or department through which the Pope grants dispensations from *public* impediments of marriage, and therefore *pro foro externo*, and also makes appointments to parishes reserved to the Holy See, or grants pensions, etc. A cardinal is generally at the head of this tribunal; he is named *Pro-datarius*, because the datary is not properly a cardinal's office.[333] He has under him an assistant *pro-datarius*, and a number of other minor officials—such as secretaries, copyists, etc. All the letters and documents containing the favors accorded by the datary are made out and expedited either by the apostolic chancery or through the office of the secretary of apostolic briefs, according as they are to be made out in the form of a bull or of a brief. The datary does not itself directly send or expedite the dispensations or favors granted by it.[334]

521. II. *The Sacred Penitentiary* (*Sacra Poenitentiaria*), which dates back to the seventh century, is the organ or tribunal which grants, in the name of the Pope, spiritual favors, such as absolutions, dispensations,—as a rule, only *pro foro interno*,[335]—and also directly expedites the favors granted by it. We say *favors;* in other words, this tribunal

[332] Bangen, l. c., p. 398.

[333] Stremler, Des Peines Eccl., p. 620.

[334] Ib., p. 621.

[335] Bangen, l. c., p. 419, 420.

has power to dispense in *occult* irregularities; to render marriages valid which are invalid because of an *occult* impediment; to absolve from censures reserved to the Pope or to the bishop, etc. We say also, only *pro foro interno.*[326] This is the general rule; for in certain cases, specified in law, the Sacred Penitentiary can grant favors also *pro foro externo.* Thus it can grant dispensations from impediments of marriage in favor of *poor* persons who cannot pay the fees required by the datary.[327]

This tribunal is presided over by a cardinal, called *Poenitentiarius major,* who has extensive Papal powers, and whose jurisdiction as to the *forum internum* does not lapse with the death of the Pope.[328] He is assisted by a theologian, a canonist, and other officials, whose duty it is to receive, examine, etc., and expedite the requests addressed to this tribunal. To him are also subject the *poenitentiarii minores,* or the confessors selected from the various religious orders to hear confessions at the three patriarchal churches in Rome, namely, St. Peter's, St. John Lateran, and St. Mary Major.[329]

Petitions for dispensations, absolutions, etc., *pro foro interno,* should be addressed to this tribunal. Both the penitent and the confessor may apply directly and by mail to the major penitentiary. Letters may be written in the vernacular.[330]

522. III. The *Signatura Gratiae*—the signature for favors—is the board or bureau of the Pope for non-contentious matters, that is, for favors and privileges other than those which are granted by him through the datary or the Sacred Penitentiary. It consists of a board of auditors or referees, to whom formerly petitions for favors addressed

[326] Bened. XIV., Const. *Pastor Bonus.*
[327] Stremler, l. c., p. 616.
[328] Ib., p. 617.
[329] Ib.
[330] Craiss., Man., n. 795.

to the Pope were referred for examination and report.[221] We say *formerly;* for at present, owing to the fact that the various sacred commissions of cardinals attend to nearly all such matters, this tribunal has lost the greater part of its former powers.

## § 3. *Tribunals of the Roman Curia for the Expedition of Papal Letters or Documents.*

523. As their name indicates, these bureaus or boards have charge mainly of the official epistolary correspondence of the Roman Pontiff or of the tribunals through which the Pope grants favors or renders decisions. We say *mainly;* for besides being, so to say, the medium of communication, they are also empowered to grant certain favors and render certain decisions. Hence their duties are not restricted to making out and sending letters containing favors or decisions given by other Roman tribunals, v.g., by the datary, the Rota, or by the Sacred Congregations. It is to be noted also that at present the Sacred Congregations very often communicate their decrees, decisions, and answers directly to the parties, and not through any of the expediting tribunals.

*Q.* Which are the Roman Pontifical expediting tribunals or bureaus?

*A.* These: I. *The Apostolic Chancery* (*Cancellaria Apostolica*). —This is the oldest expediting tribunal of the Holy See, some authors dating its origin back to St. Peter himself. It expedites at present only those Pontifical letters which are made out in the form of bulls. The following are the chief affairs expedited in the form of bulls: (*a*) All matters discussed and arranged in the Papal consistories, of which the chancery is, so to say, the secretariate. The affairs ar-

[221] Bangen, l. c., p. 391 sq.

ranged in the consistories are chiefly the appointments of archbishops, bishops, abbots, and certain other dignitaries; the conferring of the pallium; the erection, union, division, and extinction of bishoprics. (*b*) All Pontifical constitutions, decrees, laws, and other acts which require the solemnities of bulls. (*c*) Finally, favors, etc., granted by the apostolic datary when they require the form of bulls.[232]

This tribunal is always presided over by the cardinal of the church of *San Lorenzo in Damaso*, which is enclosed in the palace itself of the chancery, where also this cardinal has his residence. He is assisted by a director of chancery (*regens cancellariae*), by secretaries or copyists, etc., and by a board of prelates, which is called *Collegio de' Prelati Abbreviatori del' Parco Maggiore*, and which constitutes a sort of tribunal where doubts and difficulties that may arise relative to the formulas and clauses of decrees and bulls are discussed and decided.[233]

The cardinal-chancellor is called *vice-chancellor*, probably because the chancellorship was not formerly a cardinal's office. His jurisdiction lapses with the death of the Pope, when also the seal of the apostolic chancery is broken in the presence of the cardinals.[234] The tribunal proceeds strictly in accordance with the seventy *Regulae Cancellariae*.[235] Bulls are generally signed by the cardinal vice-chancellor and by the chancery regent. Only consistorial bulls of great importance are signed by the Pope himself.

II. *The Secretariate of Briefs* (*Secretaria Brevium*) is the bureau or department through which the Holy Father despatches Papal letters or documents which are made out in the form of briefs. This tribunal dates back to the middle ages. Briefs, which we have already described (*supra*, n. 47, 48), are so named in contradistinction to bulls. The latter

[232] Stremler, l. c., p. 623.
[233] Ib., p. 622.
[234] Craiss., Man., n. 789.
[235] Phillips, Lehrb., p. 227.

are Papal letters drawn up with great length and with many formalities and technical clauses. Briefs, on the contrary, contain in an *abbreviated* form (*in brevi forma*), and without many technical phrases, what bulls state at greater length and with more formality.[236] Briefs are signed, not by the Pope, but by the cardinal secretary of briefs and by his assistant secretary. They are stamped with the red seal of the Fisherman's ring. This ring, or rather its seal, represents St. Peter sitting in a bark and holding in his hand a fishing rod or net.[237] They are dated thus: "Given at Rome, in St. Peter's, under the Fisherman's ring," etc.

The secretariate of briefs expedites by Papal briefs permission to alienate ecclesiastical property, dispensations from want of age when there is question of promotion to sacred orders, indults to have a private oratory with the Blessed Sacrament, etc. Through this office are also despatched the greater number of favors, etc., accorded by the apostolic datary. For, as we have seen, the datary merely receives, examines, and grants the requests of parties, and then remits the matter, for the issuing of the rescript to the parties, to the apostolic chancery or to the secretariate of apostolic briefs. The more important papers are issued from the chancery in the form of bulls; the less important ones, from the secretariate of briefs in the form of briefs.[238]

This secretariate sometimes also issues in the form of briefs letters containing favors, decisions, decrees, etc., which emanate from the Sacred Congregations. We say *sometimes;* for, in most cases, the Sacred Congregations now themselves expedite directly their resolutions, decrees, indults.

This secretariate is presided over by a cardinal who is termed Pontifical Secretary of Briefs (*Secretarius Brevium*).

[236] Bangen, l. c., p. 427.

[237] Stremler, l. c., p. 624.

[238] Ib., p. 624.

He is assisted by a prelate, who is assistant secretary; by an assessor, by several subsecretaries, and by a bookkeeper. The rule is that the cardinal secretary of briefs cannot grant favors, but merely expedites those granted by the Sacred Congregations, etc. We say, *the rule is;* for he has power to accord certain favors even without asking the Pope.[239]

III. The *Secretariate of State* (*Segreteria di Stato*), which is located in the Vatican palace itself, is the ministry of exterior of the states of the Church. It is also the tribunal or department through which the Pope treats of ecclesiastical affairs with the civil powers.[240] At its head stands a cardinal, who is called secretary of state. Under him are a prelate, as assistant secretary; several subsecretaries, called *minutanti;* and other officials.

IV. The *Secretariate of Memorials* (*Secretaria Memorialium*), which has its offices in the palace of the apostolic chancery, is the bureau of the Pope which receives, examines, and answers all requests for favors, etc., addressed to the Pope more directly as a temporal sovereign. It is presided over by a cardinal as secretary. He is assisted by a prelate, as assistant secretary; by several *minutanti*, etc.

## SECTION II.

### *Ministers of the Sovereign Pontiff "Extra Curiam."*

Legates, nuncios, delegates, vicars, and prefects apostolic are, as we have seen,[241] pontifical ministers or assistants *extra curiam Romanam*, or outside of the Papal court.

[239] Stremler, l. c., p. 625.

[240] Phillips, Lehrb., p. 228.

[241] Supra, n. 486.

## Art. I.

### *Apostolic Legates, Nuncios, and Delegates.*

Apostolic legates, nuncios, and delegates (*legati, nuntii, delegati apostolici*), speaking in general, are persons appointed or sent by the Holy See to the different countries or parts of Christendom for the purpose of representing and acting for the Supreme Pontiff either in the exercise of Papal jurisdiction or in a non-jurisdictional capacity.[142]

We say, *either in the exercise*, etc. For there are, also at the present day, two kinds of apostolic envoys: 1. Those who have no real ecclesiastical jurisdiction in the country to which they are sent. Such are, for instance, those who are sent by the Pope to represent him, at the courts of princes, in a purely diplomatic capacity, or to present the Pontiff's congratulations to rulers, or to represent him at some great state or church ceremony, or to bring the cardinalitial beretta to a new cardinal living outside of Rome. These are called *delegati legati non judices* or *ablegati*.

2. Those who are clothed with Papal power or jurisdiction, more or less extended, to be exercised by them in the country or district, called their province, to which they are sent. These ambassadors, therefore, are the representatives of the Roman Pontiff in the exercise of the supreme, ordinary, and immediate jurisdiction vested in him over the whole Christian world. Of these only shall we speak in the present article. For it is evidently unnecessary to dwell further on Papal envoys who are sent without any jurisdiction.

We shall therefore inquire with regard to Papal envoys who are vested with Pontifical jurisdiction: (*a*) what right

[142] Schmalzg., l. i., t. 30, n. 1.

the Pope has to send them to different countries; (*b*) what has been the practice of the Holy See, at various times, in regard to sending them; (*c*) how many kinds there are; (*d*) what are their functions and powers.

### § 1. *Right of the Holy See to Send Envoys.*

The Vatican Council has dogmatically defined that the Roman Pontiff possesses supreme jurisdiction over the entire Church, that is, over the laity, clergy, and episcopate all over the world; that this power is truly episcopal, ordinary, and direct or immediate; that consequently the Pope can at all times and on all occasions intervene, with his authority, in all the ecclesiastical affairs of each particular diocese of the whole world, and that in the event of such intervention the laity, clergy, and episcopate are bound to obey the Pontiff.[243]

As a consequence of this teaching the Vatican Council declares that the Roman Pontiff can communicate directly and immediately with all the faithful and clergy of each and every diocese and part of Christendom, and that it is unlawful for any one to hinder this free, direct, and immediate communication. It follows, moreover, from this supreme jurisdiction, that in the government of their dioceses bishops are at all times bound to conform fully and strictly to the rules and prescriptions of the Sovereign Pontiff, and that they cannot act contrary to them.[244]

If, therefore, the Pontiff has full and supreme power over the entire Church, and if he can exercise this power in a *direct* and *immediate* manner and not merely upon appeal to him or in extraordinary cases, it is also plain that he has the right to send his envoys and representatives wherever

[243] Conc. Vat., sess. iv., cap. iii.

[244] Letter of Card. Jacobini, Pontifical Secretary of State, to the nuncio at Madrid, Apr. 15, 1885, in the *Moniteur de Rome*, May 3, 1885.

he pleases, and to confide to them the exercise of *his own power* in the measure which seems to him proper.[245] Hence to deny the right of the Pontiff to send legates, delegates, or nuncios to any part of the world, with power to act in his own name and to exercise his own supreme, ordinary, and immediate jurisdiction over laics, priests, and bishops, would be the same as to deny the primacy of the Pontiff himself, and would therefore be heresy. The utility of sending such ambassadors will appear further on.

### § 2. *Practice of the Holy See with Regard to Sending Envoys.*

The Roman Pontiffs have from the earliest ages of the Church down to the present day exercised the right of sending deputies or envoys to different parts of Christendom whenever they deemed it opportune. Sometimes they sent them without any jurisdiction and merely to arrange some diplomatic affair, or to defend the rights of the Holy See at the courts of rulers. At other times they sent them with full power to decide causes, etc., and that either temporarily and for a short time, or permanently and for an indefinite period.

Examples of permanently established apostolic delegations or nunciatures with Papal jurisdiction occur already in the early ages of the Church. Thus Leo the Great (440–461) sent the Bishop Julian to Constantinople to reside as his permanent envoy there, and confided to him *his own Pontifical authority* to be exercised in the East.[246] Likewise Pope Gregory the Great (590–604), following the example of his predecessors, sent permanent legates to Sicily, and conferred upon them ample jurisdiction over the faithful, clergy, and episcopate, in order, as he says, that where he

[245] Letter of Card. Jacobini cited above.

[246] Leo M., ep. 111; Phillips, K. R., vol. vi., p. 961.

could not be personally present *his authority might be represented and exercised by his envoys.*[247] The ambassadors of the Pope whose legateship was permanent had full authority to watch over the diocesan administration of bishops, to see that the disciplinary laws of the Church were carried out, etc.[248] The permanent envoys, besides being clothed with Papal jurisdiction, acted also in a diplomatic capacity for the Holy See.

Thus we see that already in the fourth and fifth and sixth centuries of the Church there were three kinds of apostolic ambassadors: (*a*) Those who were sent for some particular and *temporary* affair, with or without jurisdiction. Their legateship was transient. (*b*) Those whose legateship was *permanent*, and who acted in both a jurisdictional and a diplomatic capacity. They were called *apocrisiarii* or *responsales.* (*c*) Vicars apostolic, that is, bishops of countries selected by the Pope to act as his legates in their respective districts.[249]

It is well known that later on the Roman Pontiffs continued to appoint and send their envoys to various parts of Christendom. Pope Innocent III. (1198–1216), in sending his legate, wrote thus to the Greek emperor:[250] "Our Lord has appointed the Holy See to be the head and teacher of all Christendom. As the Roman Pontiff, being overwhelmed with innumerable cares, cannot personally attend to everything, he is naturally obliged to appoint assistants and representatives, and *to perform through them* what he cannot do in person. For that purpose *he confides his powers* to others, so that what is done by them is to be regarded as done by himself. As the condition of the Church at Constantinople requires the sending of a legate *a latere*, we have determined to send Pelagius, bishop of Albano, and have appointed him

[247] Greg. M., l. i., ep. 1; Phillips, l. c., pp. 693, 699.

[248] Phillips, l. c., p. 693.

[249] Phillips, K. R., vol. vi., p. 901.

[250] Ep. 104.

*in our stead*, to eradicate and destroy, to build up and to plant, what he deems proper, in the Lord."[351] As will be seen in this celebrated letter, Pope Innocent III. points out the Pontiff's right to send envoys with the power of the Pope himself; that is, in such a manner that they take the place of the Pope and act in his stead.

The present practice of the Holy See is too well known to need explanation. The Holy See has, at present, its nuncios at Paris, Vienna, Madrid, Lisbon, Munich, etc. There are also in a number of missionary countries, *v.g.*, at Constantinople, in Egypt, in Greece, etc., apostolic delegations or legateships permanently established, and depending upon the Sacred Congregation of Propaganda.[352] Recently, by a Brief of Pope Leo XIII. issued on the 24th of January, 1893, a permanent apostolic delegation has been established in the United States, with the learned and able Archbishop Satolli as its first incumbent.

Apostolic delegations, or nunciatures, are composed, as a rule, each, of the nuncio or delegate, of an auditor, and of a secretary, all appointed either by the Pope himself, through his cardinal secretary of state, or by the Sacred Congregation, upon which they depend. Hence the auditor and the secretary are not appointed or removed by the nuncio or delegate, but by the Pope, or by the Sacred Congregation. The nomination of these officials is to the apostolic delegation, not to the person of the apostolic delegate. Their tenure of office does not depend on a change of the incumbent of the delegation or nunciature, but continues till revoked by the Holy See. The auditor prepares all the cases and matters brought before the delegate, and is his adviser on all points connected with the delegation. The secretary has charge of the delegate's correspondence.[353]

[351] Phillips, l. c., vol. vi., p. 686.

[352] Gerarchia Cath. di Roma, anno 1892, p. 365.

[353] Cf. Phillips, K. R., vol. vi., p. 740.

## § 3. *Various Kinds of Apostolic Envoys.*

We observe here again that we speak, in the present treatise, only of those apostolic delegates or envoys who are vested with ecclesiastical jurisdiction to be exercised in the name and stead of the Pope himself. Popes, as we have seen, were wont, in former times, to send their envoys or representatives sometimes on temporary and transient missions, sometimes on permanent delegations. In the latter case, when one delegate or envoy was recalled, resigned, or died, another was sent by the Pontiff to succeed him. It is still the custom of the Holy See to send temporary and permanent delegates or ambassadors. Hence apostolic legateships or delegations are, at present, either temporary or permanent.

Again, in former times the Pontiffs selected as their envoys sometimes subdeacons and deacons, oftener bishops, and in matters of great importance even cardinals. Pope Gregory VII. usually selected cardinals to act as his envoys in his great work of reforming the laity, clergy, and episcopate of his times. At the present day the Pontiffs generally appoint titular archbishops, and sometimes, though rarely, and only for exceptionally grave matters, cardinals to act as their ambassadors.

When cardinals are chosen to act as Pontifical envoys, they are, owing to their exalted dignity, vested with the fullest powers to act in the stead and name of the Holy See. When titular bishops or archbishops are sent, they are clothed with ample powers indeed, but yet not with those full powers which are confided to cardinals who are legates.

From what has been said, it will be seen that there are, at present, three kinds of apostolic envoys or ambassadors:

1. *Legati a latere*, that is, envoys who are cardinals. They are legates of the first rank, and are called legates *a latere* because, owing to their close relations with the Sovereign Pontiff, they are said to be sent from his side (*a latere*).

2. *Legati missi*, or Papal envoys who are titular bishops or archbishops. They are legates of the second rank. They are called nuncios (*nuntii apostolici*) when they are sent to reside permanently at the courts of sovereign rulers; internuncios (*internuntii*) if they reside elsewhere or act only provisionally. A nuncio, acting as such, even after being elevated to the cardinalate, is named pronuncio (*pronuntius*). Nuncios, according to the present discipline, represent the Holy See in a diplomatic capacity, and are also clothed with ample Pontifical jurisdiction over the laity, clergy, and episcopate of the countries where they reside. When the *legati missi* of which we speak in the present paragraph are sent either to the courts of temporal rulers outside of Europe or to missionary countries, they are termed Apostolic Delegates (*Delegati Apostolici*).

3. *Legati nati* (legates born), called thus in contradistinction to the *legati missi* (legates sent), are those to whose see or ecclesiastical dignity the office of Papal legate is attached. The Archbishops of Canterbury and York in England, the Archbishop of Rheims in France, etc., were *legati nati*. Since the fifteenth century, however, the powers of the *legati nati* have become entirely extinct.[254] At present they retain but the name or title; the office itself no longer exists.[255] Consequently it is unnecessary to dwell upon them further in this work. In Sicily the king himself was *legatus natus* of the Holy See and exercised his legatine rights through a special tribunal.[256] This tribunal, named *Monarchia Sicula*, was abolished by Pope Pius IX. in 1867.[257]

[254] Santi, l. i., t. 30, n. 5.

[255] Phillips, Lehrb., p. 235.

[256] Salzano, l. ii., pp. 110, 111; l. i., p. 110.

[257] Walter, p. 270.

## § 4. *Powers of Apostolic Envoys.*

The *legati nati* are extinct at the present day, except as to their name. Hence there are now only two classes of apostolic envoys or representatives: (*a*) legates *a latere*; (*b*) apostolic delegates and nuncios. We shall therefore speak first of the powers of legates *a latere*; next of those of apostolic delegates and nuncios.

### I.

### *Powers of Legates "a latere."*

Legates *a latere*, or those apostolic envoys who are cardinals, are, owing to their cardinalitial dignity, the representatives of the Holy See in the highest and fullest sense of the term, and are therefore, by their very appointment as apostolic envoys, vested with the most extensive Papal jurisdiction over the country to which they are sent. Their powers are consequently more ample than those of apostolic nuncios and delegates. They enjoy certain prerogatives of honor. When they are present, archbishops and bishops should not perform certain ecclesiastical functions, such as blessing the people, which it would be unbecoming for them to perform if the Pope himself were present. Nay, even other apostolic envoys should not, in their presence, make use of their insignia. Any dishonor or disrespect exhibited to them is regarded as shown to the Holy Father himself.[294]

*Q.* What are the peculiar powers of legates *a latere?*

*A.* I. These legates have, by virtue of their appointment

[294] Phillips, K. R., vol. vi., pp. 726, 727.

as apostolic envoys, full and ample power to exercise, in the name and in the stead of the Pope himself, ordinary ecclesiastical jurisdiction over the laity, clergy, and episcopate of the country to which they are sent. We say, *in the name of the Pope himself.* For, as we have seen, Papal envoys act for the Pontiff himself—take his place and represent his person and powers—and have therefore, in principle, the same jurisdiction as the Pope himself. Consequently their jurisdiction is, like that of the Pope himself, immediate, not merely appellate, except in the causes specified by the Council of Trent.[259]

II. In consequence of their supreme, ordinary, and immediate Papal jurisdiction, legates *a latere*, besides being vested with the powers which are conferred upon apostolic nuncios and delegates, as we shall see below, possess the following exclusive rights, which are not, as a rule, confided to apostolic nuncios and delegates:

1. Wherever a legate *a latere* is present the jurisdiction of all other apostolic legates or envoys is suspended for the time being.[260]

2. He has ordinary jurisdiction over regulars who are exempted from the authority of bishops. Consequently he can hear and adjudicate all causes of exempted regulars—correct and punish them, if need be.[261]

3. He can confirm the election of archbishops, bishops, and of exempted prelates of regulars,[262] save where this has been specially reserved to the Pontiff himself. But he cannot, except by a special Papal mandate, unite or divide

[259] Sess. 24, cap. 20, de Ref.

[260] Gregor. IX., cap. 9, de off. leg. (i., 30); Glossa, ib., v. *de latere nostro.*

[261] Glossa in cap. 1, de off. leg., v. *universas;* Schmalzg., l. i., t. 30, n. 4.

[262] Cap. *Si Abbatem* 36, de elect. in 6° (i. 6). Legates other than those *a latere* cannot do this except when they receive a special mandate from the Holy See to that effect (cap. 36 cit.).

bishoprics, nor transfer bishops from one see to another, nor depose bishops.[263]

4. With regard to (*a*) granting dispensations, *v.g.*, from the impediments of marriage; (*b*) giving absolutions, *v.g.*, from censures and irregularities; (*c*) solemnizing or assisting at marriages in the place of parish priests,[264] the legate *a latere* has concurrent jurisdiction with every bishop of his district or province.[265]

5. He has ordinary and concurrent power with every bishop of his province to appoint to any and all parishes, benefices, or ecclesiastical offices situate in the country to which he is sent.[266]

6. Both in matters relating to parishes and other ecclesiastical offices, and in all other matters whatsoever, he can do in every diocese of his province whatever each bishop can do in his own diocese, nay, more than the bishop can do, excepting only those things which are expressly and specially withheld from him by the Pope or forbidden by the law of the Church, *v.g.*, in the Council of Trent, sess. 24, cap. 20, de Ref.[267]

7. Finally, he has, of course, also all the powers of other Papal envoys who are not cardinals. The latters' powers will now be explained.

## II.

### *Powers of Apostolic Nuncios and Delegates.*

Cardinals are at present sent very rarely as Papal envoys. As a rule, titular archbishops or bishops are now selected and sent from Rome to act as envoys of the Holy

[263] Cap. 3, 4, de off. leg.
[264] Schmalzg., l. i., t. 30, n. 4.
[265] Phillips, K. R., vol. vi., p. 734.
[266] Innoc. IV., cap. 1, de off. leg. in 6°; cap. 31, de praeb. in 6°.
[267] Schmalzg., l. c.

See. Thus our Delegate Apostolic is a titular archbishop. It is therefore very important to explain the powers of these envoys, who are called apostolic nuncios and delegates. They are, as we have seen, apostolic envoys or representatives of the second rank, and as a rule possess, even when appointed *cum potestate legati a latere*, Papal jurisdiction in a manner less extended than is vested in cardinal legates. Hence, unless they are expressly and specially commissioned to that effect, they do not possess the powers enumerated above as belonging to legates *a latere*.

Yet apostolic nuncios and delegates are true representatives of the Holy See. They act in the name of the Pope, and have in principle, like legates *a latere*, the same power as the Pope himself.

*Q.* What, then, are the powers of Papal nuncios and delegates?

*A.* I. According to the law and discipline of the Church as now in force, these apostolic envoys have, by virtue of their appointment as apostolic nuncios or delegates, the right to exercise, in the name and in the stead of the Pope himself, ordinary ecclesiastical jurisdiction over the laity, clergy, and episcopate of the country to which they are sent.[268] The country to which they are sent is called their province, because they resemble the old Roman governors and proconsuls. For as the latter were sent by the Roman emperor to govern the various provinces of the empire in his name and with his authority, so apostolic delegates and nuncios are sent by the Pope to govern in his name, spiritually and ecclesiastically, certain countries of Christendom.[269]

We say, *in the name of the Pope himself.* For these apostolic envoys *take the place of the Roman Pontiff himself*, represent his powers and his person, and have therefore in

[268] Clemens IV., cap. 2, de off. leg. in 6° (i. 15); Schmalzg, l. i., t. 30, n. 2.
[269] Clemens IV., cap. 2 cit.

principle the same jurisdiction as the Pope himself. They are sent by the Roman Pontiff, with his own power, in order to act in his stead and in his name, in all matters falling under his jurisdiction as the head of the Church. Consequently their jurisdiction is, like that of the Pope himself, immediate, not merely appellate, save with regard to the causes specified by the Council of Trent.[370]

We say also, *over the laity, clergy, and episcopate*, etc.; for as the Pope possesses supreme and immediate ordinary jurisdiction, not only over the laity and clergy, but also over bishops and archbishops, so apostolic nuncios and delegates, representing him as they do, have supreme papal jurisdiction, not only over the laics, but also over the priests and bishops of their district or province.[371]

II. In virtue of their supreme, ordinary, and immediate Papal jurisdiction, apostolic delegates and nuncios possess the following powers:

1. They have the power of supreme inspection and direction in regard to the ecclesiastical affairs of their province.[372] For it is their duty to eradicate and punish crimes, and to plant and build up virtues.[373] Consequently, as Cardinal Jacobini, Papal secretary of state, writes, in the letter already quoted, if the authority of bishops should always and in all matters be subject to that of the Pope, and if they cannot exercise their power against his will and against the rules laid down by him, so likewise should the jurisdiction of bishops never be exercised against the prescriptions of the apostolic nuncio or delegate. Hence the actions of bishops, taken individually or collectively, is always subject to the Pontiff's representative.

2. Every apostolic nuncio or delegate can and should, if need be, reform the conduct and correct or punish, *v.g.*, by

[370] Sess. 24, cap 20, de Ref.
[371] Schmalzg., l. i., t. 30, n. 2.
[372] Arg. cap. 2, de off. leg. in 6°.
[373] Reiff., l. i., t. 30, n. 14.

ecclesiastical censures, the excesses, not merely of the laity and the clergy, but also of the bishops and archbishops of his province or of the country to which he is sent. For he is their judge, their ordinary, and their superior,[274] and it is his right and duty to extirpate and destroy whatever is evil and contrary to the law of the Church, and to build up and to plant whatever is good and proper.[275]

3. Apostolic delegates and nuncios can enact for their entire province permanent statutes, *i.e.*, such as will remain in force even after their legateship has expired,[276] *v.g.*, by their recall or resignation.

4. They can and should preserve, in their province, loyalty and fidelity to the Holy See, and particularly enforce therein the laws of the Church.[277]

5. They can, with regard to the appointment of bishops, inquire into the merits of the various candidates,[278] and send the information obtained by them to the Holy Father.[279] Hence the Apostolic Delegate in the United States can demand that the lists of the candidates for vacant sees, selected by the irremovable rectors and the diocesan consultors on the one hand, and by the bishops of the province on the other, shall be sent to him, so that he may inquire into the merits of the candidates and forward his information to Rome.

6. As we have shown, apostolic envoys, whether they are nuncios or delegates, can exercise their supreme Papal jurisdiction in a direct manner and not merely on appeal. Hence, prior to the Council of Trent, they could and did hear and decide, even in the first instance, all contentious causes whatever, whether relating to marriages or parishes and ecclesiastical offices, and other civil affairs, or criminal

[274] Schmalzg., l. i., t. 30, n. 2. However, he cannot depose bishops.
[275] Clem. IV., cap. 2, de off. leg. in 6°. [276] Cap. x., de off. leg. (i. 30).
[277] Schmalzg., l. c. [278] Ib. [279] Ex cap. 4, de off. leg.

and disciplinary matters.[280] But owing to the danger of misunderstandings and conflicts of authority, the Council of Trent modified the immediate contentious jurisdiction of all Papal envoys, even of those *a latere*, and made it appellate, in the above causes.[281] Accordingly, at present, apostolic delegates and nuncios can as a rule hear and decide such causes only on appeal from a definitive or a quasi-definitive sentence, or from a decision which, though not final in form, is yet, in reality and in its effect, tantamount to a final decision, or on appeal from a grievance which cannot be repaired or undone by a final sentence.[282]

We have said, *as a rule*. For they can hear and decide the above causes, also in the first instance, (*a*) where the ordinary has neglected to terminate them within two years from the beginning of the litigation; (*b*) when they are specially and expressly authorized by the Holy Father;[283] (*c*) when both the bishop and the parties consent.[284]

We have said that apostolic delegates and nuncios can, at present, hear and decide contentious causes, not in the first instance, but only on appeal. Can they decide such causes also when the right of appeal has lapsed or is denied by the general law of the Church? We will suppose a practical case. A bishop has decided a case, judicially or extrajudicially. The party who feels aggrieved by the decision neglects to appeal within ten days, and thus loses the right of appeal. Can he nevertheless bring his case before the apostolic delegate, by way of simple recourse—*per viam recursus?* Yes.[285] Why? Because the Pope, in whose name and by whose supreme authority the delegate acts, can re-

[280] Cap. 1, de off. leg. (i. 30). [281] Conc. Trid., sess. 24, cap. 20, de Ref.
[282] Cf. Conc. Trid., sess. 22, c. 7, de Ref.; cap. 3, de app. in 6° (ii. 15).
[283] Conc. Trid., sess. 24, cap. 22, de Ref.
[284] S. C. C., 4 Aug. 1691; Can. et decr. C Trid., Schulte et Richter, p. 389.
[285] Cap. 1, de off. leg. (i. 36).

ceive and decide complaints, by way of recourse, even after the term granted for appealing has elapsed.

Of course, the apostolic delegate or nuncio, being possessed of ordinary Papal jurisdiction over the entire laity, clergy, and episcopate of his province, can, like any other ordinary, hear and decide causes, either in person, or through other ecclesiastics delegated by him. The jurisdiction of the person delegated by the apostolic delegate or nuncio continues even after the apostolic nuncio's or delegate's jurisdiction has expired, *v.g.*, by his recall, death, etc., provided the citation of the parties has taken place before the lapse of the apostolic legate's jurisdiction.[286]

7. One of the principal rights and duties of apostolic nuncios and delegates is the visitation of the country or district to which they are sent.[287] The object of this visitation by the apostolic envoys is to eradicate and destroy what is opposed to the law of the Church, and to build up and to plant what is in harmony with it.[288] Hence, on occasion of their visitation, they can,[289] in the same manner as bishops, demand the *procuratio* or travelling expenses from all the churches and ecclesiastical institutes visited by them.[290]

8. Moreover, apostolic delegates and nuncios can, by virtue of their general mandate and without any special authorization from the Pope, convene and preside over provincial and even plenary or national councils.[291] We say, *over provincial councils.* For these Papal envoys possess, in every province of their district, the same jurisdiction which each metropolitan has in his province. Now the metropolitan can, by his ordinary authority, convoke and preside over provincial councils. We say also, *and even plenary or na-*

[286] Cap. 10, de off. leg. (i. 30); Schmalzg., l. i., t. 30, n. 3.
[287] Cap. 2, de off. leg. in 6° (i. 15). [288] Phillips, K. R., vol. vi., p. 733.
[289] Cap. 17, de Cens. (iii. 39); cap. 11, de praescr. (ii. 26).
[290] Cap. 21, de Cens. (iii. 39). [291] Bouix, de Conc. Prov., p. 75.

*tional councils.* For, as we have seen, apostolic delegates are vested with the supreme, ordinary, and immediate jurisdiction of the Pope himself [292] over the entire country committed to their care, and therefore can, like the Pope himself, convene and preside over plenary or national synods.

9. Finally, apostolic delegates and nuncios can, speaking in general, perform in the country assigned to them not only what a bishop can do in his diocese and an archbishop in his province, but also what the Pope himself can do,[293] excepting those things only which are reserved as special prerogatives to the Supreme Pontiff.[294] Now some matters are reserved to the Pope by the general law of the Church, *v.g.*, the *causae majores*;[295] others by the Pontiff himself, when he establishes an apostolic delegation or appoints the apostolic delegate. For it is plain that the Pope is at liberty to confide to his envoys or representatives, whether they be called apostolic delegates or nuncios, the exercise of his own supreme jurisdiction in the measure which seems to him proper.[296]

*Q.* What powers are not possessed by apostolic delegates or nuncios by virtue of their general mandate, or by their very appointment?

*A.* We have seen above that apostolic delegates possess the supreme power of the Pope delegating, in all things save those which are reserved to the Pope either by the

[292] Pope Pius VI., in his celebrated Brief *de Nuntiaturis*, writes: "Romanus Pontifex . . . suo fungitur apostolico munere per ecclesiasticos viros, sive stabiles, sive ad tempus, veluti magis expedire censuerit, delegatos in iis dissitis locis ubi ipse interesse non potest; praecipiens eisdem, ut ibi *suas vices obeant, eamque jurisdictionem exerceant, quam is per se si adesset, exerceret.*" Cf. Bouix, de Conc. Prov., p. 80.

[293] Arg. cap. 2, de off. leg. in 6°.

[294] Schmalzg, l. i., t. 30, n. 2.

[295] Cap. 4, de off. leg. (i. 30).

[296] Letter of Card. Jacobini, Apr. 15, 1885, above quoted.

Pope himself or by the general law of the Church. We shall now enumerate the chief matters thus reserved and therefore not within the competence of apostolic delegates.

Accordingly, 1. Apostolic delegates cannot hear and decide the *causae majores*, such as the transfer or removal of bishops, the union or division of dioceses, etc.[297] 2. They cannot interfere in a cause which has been delegated to another ecclesiastic by special mandate of the Pope or of a Sacred Congregation.[298] 3. Likewise, they cannot receive an appeal from the sentence or decision of an ecclesiastical judge delegated by the Pope or by a Sacred Congregation to adjudicate a cause.[299] 4. Nor can they do anything in a cause which has been referred to the Holy See.[300] 5. Again, the jurisdiction of apostolic delegates or nuncios does not extend to exempted regulars.[301] 6. They cannot appoint rectors of parishes (with us, *quasi* parishes).[302] 7. Their jurisdiction is restricted as to place; that is, it is confined (*a*) to the limits of their province, and (*b*) to the persons living therein. Hence, when a delegate apostolic is outside his province, he cannot exercise contentious jurisdiction, such as to absolve from censures, even with regard to those who live in his province.[303]

We have said in the question, by virtue of their *general mandate or by their very appointment*. For apostolic delegates and nuncios may and frequently do receive from the Pope, by special mandate or authorization, the power to arrange and decide the above affairs and all other matters reserved exclusively to the Pope.

From the above it will be seen that the powers of an apostolic delegate are determined, (*a*) as to their ordinary

[297] Cap. 4, de off. leg. (i. 30). [298] Cap. 2, de off. leg.

[299] Arg., cap. 11, de off. jud. deleg. (i. 29).

[300] Cap. 5, de off. leg.; Schmalzg., l. i., t. 30, n. 3.

[301] Cap. 36, de elect. in 6° (i. 6); Schmalzg., l. c., n. 6.

[302] Cap. 1, de off. leg. in 6°. [303] Cap. 9, de off. leg. (i.30).

and general extent, by his very appointment or by his general mandate;[304] (*b*) as to their exceptional nature and extent, by his special letters of authorization from the Pope.

Lastly, in his capacity of representative of the Holy Father, the apostolic delegate is responsible for his acts only to the Supreme Pontiff or the Sacred Congregation upon which he depends, and not to the laity, clergy, or episcopate of the country where he resides. Hence his acts should not be publicly criticised by the laity, clergy, or episcopate, who, however, as the cardinal secretary says in the letter quoted,[305] have the right to have recourse to Rome when they have reason to believe that the apostolic delegate or nuncio has gone beyond the limits of his mission or abused his powers.

### § 5. *Support of Apostolic Delegates and Nuncios.*

Apostolic delegates and nuncios are sometimes supported by the Holy See itself, when it has the means to do so.[306] This is the case at present with the Apostolic Delegate in this country, who receives annually $6000 from the S. Congr. de Prop. Fide. At times, however, their means of support comes from contributions of the laity, clergy, and episcopate of the country to which they are sent. In fact these Papal envoys labor for the spiritual welfare of the faithful, the clergy, and the episcopate of the country committed to them.[307] Hence the words of St. Paul apply to them:[308] "If

[304] The Roman law says: "Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest," l. 2 ff., de jurisd. (ii. 1). Pope Alexander III. enacts: "Ex eo quod causa (Delegatio Apostolica) sibi (Delegato Apostolico) committitur, super omnibus, quae ad causam (Delegationem) ipsam spectare noscuntur plenariam recipit potestatem." Cap. 5, de off. jud. del. (i. 29).

[305] The letter is printed in the *Moniteur de Rome*, May 3, 1885.

[306] Phillips, K. R., vol. vi., p. 732. [307] Cf. cap. 11, de praescr. (ii. 26).

[308] I. Cor. ix. 11.

we have sown unto you spiritual things, is it a great matter if we reap your carnal things?" There is no doubt that, should occasion offer, *v.g.*, if the Holy See should lack the means, the laity, the clergy, and the episcopate of this country would cheerfully supply the Apostolic Delegate with a generous and ample support. The movement now on foot to provide him with an official residence at Washington is sufficient proof of this.

### § 6. *How the Powers of Papal Envoys Expire.*

*Q.* In how many ways does the jurisdiction of apostolic legates, nuncios, and delegates lapse?

*A.* It is necessary to distinguish between apostolic delegations which are temporary and those which are permanent. Where the apostolic delegation is merely temporary or for a determinate affair only, the delegate's jurisdiction expires with the lapse of the time for which he was appointed,[309] or when the affair for which he was sent is terminated.

In the second case, namely, where the apostolic delegation is permanently established, as is the case in this country, the apostolic delegate's jurisdiction expires in the following ways: 1. When he has referred a matter or cause to the Pope his jurisdiction expires, so far as concerns the cause or matter referred to the Pope by him.[310]

2. Where of his own accord he leaves the country assigned to him. Here, however, we must distinguish: If he leaves his province with the intention of not returning to it, which he cannot do without leave from the Pope, his power and jurisdiction cease completely the moment he has gone away.[311] If he leaves only temporarily, with the inten-

[309] Cap. 4, de off. jud. del. (i. 29). [310] Cap. 5, de off. leg. (i. 30).
[311] L. 3 ff., de off. praes. (i. 18).

tion of returning soon, his contentious jurisdiction is suspended during such absence.[313] We say *contentious;* for he retains and can exercise his voluntary jurisdiction during such absence.[313]

3. When he is recalled by the Pope, and the recall becomes legitimately known to him. Until the revocation comes to his knowledge, the acts performed by him are valid, even though done after his recall.[314] Nay, it would appear that even after the recall becomes known to him he retains jurisdiction until he has actually left his province.[315]

4. By the death of the apostolic delegate. Of course, as far as the dead delegate himself is concerned death takes from him all power. But the question is, Do the powers of the apostolic delegate lapse with his death in such a manner that they do not pass to his successor except by a new grant from the Holy See? Here we must again distinguish between the ordinary and the extraordinary powers vested in him. Whatever extraordinary jurisdiction is conferred upon him is to be looked upon as personal and not as annexed to the office or the apostolic delegation. Therefore it lapses with the death (also with the recall, resignation, etc.) of the apostolic delegate.

With regard to the powers ordinarily vested in the apostolic delegate there are two opinions. One looks upon them as personal rather than as annexed to the office or the apostolic delegation, and in consequence contends that they expire with the incumbent's death and are to be renewed with regard to the successor.[316] The other opinion holds that they are annexed to the office itself or the apostolic delegation, and therefore do not lapse with the death of the apostolic delegate, but pass to his successor without any new grant or indult from the Holy See.[317]

[312] Schmalzg., l. i., t. 30, n. 10.

[313] L. 2 ff., de off. Proc. et leg. (i. 16).

[314] Cap. 4, de rest. spol. (ii. 13).

[316] Schmalzg., l. c., p. 5.

[315] Schmalzg., l. i., t. 30, n. 10.

[317] Cf. Reiff., l. i., t. 30, n. 44.

Of course, all depends upon the mind of the Holy See. If the Roman Pontiff intends the powers in question to be attached to the delegation itself and not merely to the person of the delegate, they do not lapse with the death, recall, or resignation of the apostolic delegate; otherwise they do. Now in establishing a permanent apostolic delegation it is plainly the mind of the Holy See that the powers spoken of shall be annexed to the office or delegation itself, and not merely vested in the person of the delegate.

5. Does the jurisdiction of apostolic delegates, nuncios, or legates expire with the death of the delegating Pope? It does if the apostolic delegate is appointed with the clause *ad beneplacitum legantis*, i.e., of the Pope. For the pleasure or will of the Pope (*beneplacitum Pontificis*) expires with his death, and consequently also the power made contingent on such will or pleasure.[318]

But when the apostolic delegate is appointed either without the above clause or with the clause *ad beneplacitum nostrum* (*Pontificis*) *et hujus S. Sedis*—which is the clause employed by Pope Leo XIII. in appointing the apostolic delegate for the United States—his jurisdiction does not lapse with the death of the delegating Pontiff. For the supreme Papal power of apostolic delegates is *ordinary* and therefore does not expire with the death of the Pope appointing or delegating.[319] Moreover, the Holy See does not die, and consequently neither the power conferred *ad beneplacitum S. Sedis*. Hence also Papal envoys are called apostolic delegates, nuncios; or delegates, nuncios, and legates of the Holy See.

The above holds even where the Pope dies before the apostolic delegate has reached the country assigned to him, or where as yet he has not exercised a single act of his apostolic delegation.[320]

From all this it will be seen that when a Pope dies, apos-

[318] Schmalzg., l. i., t. 30, n. 11.

[319] Clem. IV., cap. 2, de off. leg. in 6° (i. 15).

[320] Schmalzg., l. c.

tolic delegates appointed *ad beneplacitum S. Sedis*—which is always the case where the apostolic delegation is permanently established—remain apostolic delegates and retain all their supreme jurisdiction until they are recalled by the successor of the dead Pontiff, or *sede papali vacante* by the Sacred College of Cardinals. However, pending the vacancy of the Papal chair, the Sacred College of Cardinals cannot, as a rule, recall apostolic delegates except for grave and urgent cause. The reason is that the Sacred College cannot, pending the vacancy of the Papal chair, exercise full Papal jurisdiction, but merely expedite certain matters which do not admit of delay.

522. *Q.* What are the laws of the United States in relation to ambassadors?

*A.*—1. Ambassadors are exempted absolutely from all allegiance and responsibility to the laws of the country to which they are deputed.[321] 2. Their persons are deemed inviolable. 3. An ambassador, while he resides in the foreign state, is considered as a member of his own country; and the government he represents has exclusive cognizance of his conduct and control of his person.[322] 4. The attendants of the ambassador and the effects in his use are equally exempt from foreign jurisdiction. 5. A person who offers violence to ambassadors, or is concerned in prosecuting and arresting them, is liable to imprisonment for three years and to a fine at the discretion of the court.[323]

523. *Q.* Are these laws applicable to Papal legates?

*A.* A Papal legate may be sent to represent the Holy See, either in a diplomatic capacity only or in matters purely ecclesiastical. In the latter case he would be considered as an ordinary resident of the country; in the former he would rank with other ambassadors, and be entitled to equal rights with them.

[321] Kent, vol. i., p. 38. [322] Ib., p. 39. [323] Ib., p. 182.

## Art. II.

### *Of Apostolic Vicars. Prefects, Commissaries, and Prothonotaries.*

524. *Vicars and Prefects Apostolic.*—There is a material difference between the vicars-apostolic of antiquity and those of the present day.[324] The former corresponded to the *legati nati* of later times; the latter are those who are deputed by the Pontiff to exercise the pastoral care in certain churches or districts, *not in their own name, but that of the Pope.*[325] The appointment of apostolic vicars is based on the principle that the Pope, as bishop of the whole world, or as *ordinarius* of the entire Church, has the direct ecclesiastical management of all those places and dioceses where the ecclesiastical régime is not organized in perfect conformity with canon law.[326] Hence, vicars-apostolic are appointed, 1, for missionary countries where as yet dioceses are merely in the course of formation—*v.g.*, in the United States; 2, for the Catholic portion of the community in countries that have fallen from the faith.[327] We said above, *in perfect conformity with canon law;* for the Holy See—*i.e.*, the Propaganda, which is, in this respect, the representative of the Pope—retains the direct management of these places, not only until dioceses are simply formed (as in the United States) or re-established, but until they are all, without exception, *perfectly* organized—*i.e.*, placed on an *entirely* canonical footing, having chapters, etc.; in other words, until canon law *fully* obtains. So long, therefore, as the organization of a diocese is in *any way* abnormal—*i.e.*, not conformable to canon law—the Propaganda has direct charge of it.[328] 3. Besides, vicars-apostolic are also appointed, in

[324] Craiss., n. 815.
[325] Phillips, Lehrb., § 126; cfr. Walter, § 132.
[326] Ib.
[327] Ib., n. 815.
[328] Phillips, l. c.

urgent cases, where the administration of a diocese fully organized becomes temporarily disordered—*v.g.*, by the absence, captivity, sickness, and the like of its bishop.[329] As the Propaganda has the immediate control of all places having diocesan organizations, incomplete or abnormal, or disordered, it is placed over all vicars-apostolic, whether they be simple priests under the title of prefects, or bishops *in partibus*, or ordinary bishops in the capacity of apostolic delegates. Hence, also, the bishops of the United States and of Ireland are not preconized in consistory, but proposed to the Pope by the Propaganda.[330]

525. *Apostolic Commissaries* (*commissarii apostolici, delegati Papae*).—They are those persons whom the Holy See commissions to take cognizance of and arrange certain matters—*v.g.*, vicars-general, to whom the execution of matrimonial dispensations is committed by the Holy See.[331] The Holy See, as a rule, selects as agents or commissaries only ecclesiastical dignitaries—canons, vicars-general, and superiors of religious communities. Note.—Apostolic delegates are appointed either directly by the Holy See (*delegati ab homine*) or by the *jus commune—v.g.*, by the Council of Trent (*delegati a jure*).[332] As is evident, the commissaries of which we here speak are *delegati ab homine*, not *a jure*.

526. *Apostolic Prothonotaries* (*protonotarii apostolici*).—These are of three kinds: 1. *Protonotarii participantes* or *de collegio;* these alone have the full rights of the prothonotaryship. 2. *Protonotarii supernumerarii* or *ad instar participantium;* they have nearly all the rights, so far as honors are concerned (*jura honorifica*), of the *participantes.* Hence, they may wear the dress of prelates (*habitus praelatitius*)—*i.e.*, the cassock (*subtana*) and mantle (*mantellettum*) of violet, and the rochet; they may also celebrate pontifically,

[329] Phillips, l.c., p. 236.

[330] Ib., l. c.; cfr. ib., Kirchenr., vol. vi., pp. 746, 748.

[331] Craiss., n. 817.

[332] Reiff., lib. i., tit. xxix., n. 33, 34

though only with the consent of the ordinary. Prothonotaries *participantes* may celebrate private Masses, like prelates, both in and out of Rome. But prothonotaries *ad instar* cannot, in celebrating private Masses, distinguish themselves from simple priests. This is certain at present, as is evident from the following words of the *Const. Ap. Sedis Officium*, issued by Pope Pius IX. in 1872, regarding prothonotaries *ad instar*: " In Missis privatis quoad indumenta, caeremonias, ministros, altaris ornatum, cereorum lucentium numerum, protonotarii ad instar a simplici sacerdote non differant, adeoque nullum prorsus ex ornamentis Pontificalibus pro Missa solemni tantum sibi indultis adhibeant, atque ab omnibus et singulis ritibus in ipsa Missa solemni sibi vetitis penitus abstineant " (Const. cit., § 18, ap. De Herdt, Praxis Pontif., tom. iii., p. 509). 3. *Protonotarii honorarii* are of a grade inferior to the foregoing."[333]

[333] Craiss., n. 828.

# CHAPTER IV.

## OF PATRIARCHS, PRIMATES, AND METROPOLITANS.

### ART. I.

### *Patriarchs.*

527. *Patriarchs* (*patriarchae*) are bishops who preside not merely over one diocese or province, but over several provinces or districts.[1] The dignity itself of patriarchs dates back to the apostles; the name came into use only from the time of the Council of Chalcedon.[2] *Rights formerly possessed by Patriarchs.*—They had power chiefly, 1, to consecrate metropolitans and give them the pallium; 2, to assemble and preside at patriarchal or national[3] councils; 3, to receive appeals from the sentence of metropolitans. These rights may be summed up thus: The jurisdiction exercised by patriarchs over metropolitans was similar to that exercised in turn by metropolitans over their suffragan bishops.[4] The four great patriarchates of the Eastern Church—namely, of Alexandria, Antioch, Constantinople, and Jerusalem—having fallen into schism and heresy, have long ago become extinct.[5] The Holy See, however, in order to preserve the memory of these patriarchates, still creates titular patriarchs of these sees,[6] who reside in Rome; they have only the title of patriarchs, but no jurisdiction, excepting, however, the Patriarch of Jerusalem, who was sent to his see by Pope Pius IX., and occupies it at present.

[1] Craiss., n. 820. [2] Soglia, vol. i., pp. 267, 268. [3] Ib., p. 273.
[4] Craiss., n. 822. [5] Phillips, Lehrb., p. 239. [6] Ib., p. 240.
[7] Craiss., n. 821.

Besides these, there are still in the Oriental Church several actual patriarchs in communion with the Holy See. Thus, the Chaldeans, Melchites, Maronites, Syrians, and Armenians, who are united with the Catholic Church,[8] have their patriarchs, to whom the Holy See usually grants faculties similar to those enjoyed by the patriarchs of old.[9] The Roman Pontiff is the patriarch of the Western or Latin Church. Besides, there are in the Latin Church the patriarchs of Lisbon, Venice, and the West Indies; they are called *patriarchae minores*, and have only the title, not the jurisdiction, of patriarchs.[10] The patriarchate itself is not of divine but of ecclesiastical institution.[11]

## Art. II.

### *Primates.*

528. By *primates* (termed *primates* in the Latin, *exarchi* in the Greek Church) are meant at present those who are placed over several metropolitans.[12] Primates formerly had the right to convene national councils and receive appeals from the sentence of metropolitans.[13] These privileges have lapsed, and, where primates still exist, they merely retain the name or title,[14] not the jurisdiction formerly attached to the primateship.[15] Salzano, however, observes that even at the present day primatial jurisdiction is vested in the Primate of Hungary and in the Archbishops of Toledo and Armagh. In the United States, the Archbishop of Baltimore, by virtue of the *praerogativa loci*,[16] affixed to his see, occupies the first seat in all councils, meetings, and the like. This privilege, as is evident, is simply one of honor,

[8] Walter, pp. 303, 304. [9] Soglia, l. c., p. 274. [10] Walter, pp. 303, 304.
[11] Soglia, l. c., p. 272. [12] Craiss., Man., n. 826; cfr. Craiss., Elem., n. 392.
[13] Phillips, l. c., p. 240. [14] Soglia, l. c., p. 275.
[15] Salzano, lib. ii., pp. 126, 127; cfr. Walter, p. 304.
[16] Decr., Aug. 15, 1858, ap. Conc. Pl. Balt. II., app. xxx., p. 343.

not of jurisdiction, and includes no primatial rights whatever.[17]

## Art. III.

### *Metropolitans.*

529. A *metropolitan* (*metropolitanus*, *metropolita*, *archiepiscopus*) is the bishop of a metropolis or chief city of a province, who presides over an entire province.[18] Metropolitans are also named archbishops, although, strictly speaking, the former are those who have suffragan bishops, while the latter may not have any.[19] Every metropolitan, therefore, is rightly called an archbishop; but not every archbishop is a metropolitan.[20] The dignity of metropolitans, though not of divine institution, is nevertheless very ancient, and, according to a highly probable opinion, dates back to the apostles themselves.[21] Thus, many canonists hold that Titus and Timothy were created metropolitans by St. Paul; the former of Crete, the latter of Asia.[22] *Powers and Rights of Metropolitans.*—1. *Formerly* the jurisdiction of metropolitans was very extensive.[23] Suffragan bishops could do nothing of importance without their consent. They had the chief voice or part in the election of the bishops of their provinces,[24] etc. These ample powers came to be greatly restricted in later times. 2. *At present* the metropolitical jurisdiction, speaking in general, extends (*a*) over suffragans, (*b*) over the subjects or dioceseners of suffragans. We say, speaking in general; what these rights are in particular we shall now examine.[25]

530. *Q.* What are, at present, the rights of metropolitans *over their suffragan bishops?*

[17] Our Notes, n. 34. [18] Soglia, l. c., p. 276; our Notes, n. 78, 79.
[19] Salzano, l. c., p. 127. [20] Ferraris, V. Archiep., art. i., n. 3–5.
[21] Craiss., n. 831. [22] Cfr. Conc. Pl. Balt. II., n. 78. [23] Ib., 79–81.
[24] Craiss., n. 832. [25] Phillips, Kirchenr., vol. vi., p. 821.

*A*. Chiefly these:[26] 1. To convoke provincial councils every third year.[27] 2. To make the visitation of their provinces; but at present they can do so only when authorized by provincial councils. As provincial councils are but rarely held,[28] these visitations also have come to be discontinued. 3. To urge suffragans to comply with their episcopal duties, especially that of residence. 4. Their judicial power was restricted by the Council of Trent,[29] so that at present the more grave criminal charges against bishops (*causae criminales majores*) can be decided by the Sovereign Pontiff only; the less[30] (*causae criminales minores*), in provincial councils. Metropolitans therefore can, at most, take cognizance of *civil* causes of suffragans.[31]

531. *Q.* What are, at present, the rights of metropolitans *in relation to the subjects of their suffragans?*

*A*. Metropolitans have jurisdiction over the subjects of their suffragans chiefly in three cases:[32] on appeal, during visitation, and by devolution.[33] I. *On Appeal* (*in appellatione*).—Thus, the subjects of suffragans may appeal to the archbishop in all grievances whatever—*i.e.*, not only from a juridical sentence of the bishop, but also from all gravamina or abuses of episcopal authority, and consequently from extra-judicial acts.[34] II. *During Visitation* (*in sacra visitatione*).—When visiting his province, the metropolitan may exercise jurisdiction, 1, *in foro interno*, by hearing the confessions of, and absolving, either personally or through others, all the subjects of suffragans; he may also absolve from cases reserved to the suffragan; 2, *in foro externo*, by proceeding against notorious criminals, also against those

[26] Cfr. Conc. Pl. Balt. II., n. 81. [27] Our Notes, n. 79.
[28] Phillips, l. c., p. 826; cfr. Conc. Trid., sess. xxiv., cap. iii., d. R.
[29] Sess. xxiv., cap. v., d. R. [30] Soglia, vol. i., pp. 276, 277
[31] Phillips, Lehrb., p. 243. [32] Ib. [33] Soglia, l. c., p. 277.
[34] Craiss., n. 839; cfr. Conc. Trid., sess. xiii., cap. i., d. R.; sess. xxiv. cap. x. d. R.

who hinder him from exercising his jurisdiction, etc.[35] III. *By Devolution* (*jure devolutionis*).—When the suffragan,[36] whether in the exercise of voluntary or contentious jurisdiction,[37] neglects to comply with the duties of his office, the metropolitan acquires jurisdiction over the diocese of his suffragan, and may remedy (*jus supplendi*) the negligence of such suffragan.[38] It is a controverted question whether this *remedial* jurisdiction devolves upon the metropolitan universally[39]—*i.e.*, in all cases of negligence of suffragans—or only in those particular cases which are specified by the canons of the Church. According to the more probable opinion, which also corresponds to the present discipline of the Church, it is limited to cases expressly laid down by law.[40] Of these cases, determined in canon law, the following are some of the more important, and therefore deserve special mention: 1. If a suffragan bishop refuses to grant a dispensation, grantable by him *jure proprio*, which, considering the person, place, age, or the good of religion, should be given, the metropolitan has the right to concede it. 2. Metropolitans may appoint to parishes, offices, and the like, of comprovincial dioceses,[41] where appointments are not made within the time prefixed by canon law.[42] 3. Capitular vicars, if not elected by the chapter within eight days from the vacancy of the see, are appointed by the metropolitan.[43] In the United States the temporary administrator is designated either by the bishop, while alive,[44] or, in his default, by the metropolitan or senior suffragan. The permanent administrator is appointed by the Holy See.

532. *Specific character or nature of the jurisdiction of metropolitans,* 1, *over their suffragans;* 2, *over the subjects of*

[35] Phillips, l. c. [36] Soglia, l. c. [37] Reiff., lib. i., tit. x., n. 6, 7.
[38] Ib., tit. xxxi., n. 48. [39] Ib., tit. x., n. 9, 10.
[40] Phillips, Kirchenr., vol. vi., pp. 832, 833. [41] Craiss., n. 842.
[42] Cfr. Devoti, lib. i., tit. iii., n. 40. [43] Soglia, l. c., p. 277.
[44] Our Notes, n. 70–73; cfr. Conc. Pl. Balt. II., n. 96, 97.

*suffragans.*—I. In general it seems to be admitted that the metropolitical jurisdiction over suffragans, as well as over the subjects of suffragans,[45] is not universal, but is to be limited to cases expressly stated in canon law. II. Nevertheless, the *jurisdictio metropolitana* is not exercisible in the same manner towards suffragans as towards the subjects of suffragans. For, 1, so far as it relates to suffragans,[46] this jurisdiction is direct, immediate, and also ordinary. The metropolitan, therefore, is the *ordinarius*[47] and immediate superior of his suffragans.[48] 2. So far, however, as the authority of metropolitans extends towards the subjects of suffragans, it is only mediate[49]—*i.e.*, exercisible only on appeal, etc., as was seen.

533. *The Pallium.*—It is defined the chief ornament of patriarchs and archbishops, and the symbol of the plenitude of the pastoral jurisdiction conferred upon them by the Holy See.[50] Its *form* is that of a stole or band of white wool, having a width of about three fingers; it is worn over the shoulders, forming a circle around the neck, and is embroidered with four or six black or purple crosses.[51] Morally, the pallium signifies the lost sheep carried back to the right path on the shoulders of the loving shepherd. We ask: Where and when can the pallium be worn by archbishops? 1. At solemn or High Mass only;[52] 2, *inside* every church, even though exempt, of the province;[53] it cannot be used *outside* the church or in the open air—*v.g.*, in outdoor processions.[54] 3. Only on the more solemn feasts, such as Christmas, the feast of St. Stephen, St. John, Cir-

[45] Craiss., n. 836. [46] Ib., n. 837. [47] Phillips, Kirchenr., l. c., p. 821
[48] Reiff., lib. i., tit. xxxi., n. 35. [49] Craiss., n. 839.
[50] Ib., n. 846; cfr. Phillips, Lehrb., § 130; Reiff., lib. i., tit. viii., n. 2, 3.
[51] Salzano, lib. ii., pp. 130, 131. [52] Ib.; cfr. Phillips, Lehrb., p 245.
[53] Archbishops cannot, aside from a special privilege, wear the pallium *outside* of their provinces. Cfr. Reiff., l. c., n. 13; cfr. Conc. Pl. Balt. II., n. 81.
[54] Reiff., l. c., n. 12–16.

cumcision, Epiphany, Palm Sunday, Easter, etc.; also on the opening day of the provincial council. Titular patriarchs and archbishops (*i.e.*, those *in partibus*) do not receive the pallium, since they never reside in their provinces.

*Q.* What are archbishops forbidden to do before they receive the pallium?

*A.* We must distinguish between the functions or powers of episcopal jurisdiction and those of episcopal order. 1. Archbishops-elect, like bishops-elect,[55] even though not yet consecrated bishops, can exercise full jurisdiction as Ordinaries of their respective dioceses as soon as they have received and properly exhibited the bulls of their appointment.[56] But they cannot, before receiving the pallium, exercise any jurisdiction over the province, such as convoking provincial councils, receiving appeals. 2. They can perform those episcopal functions of order where they vest, not in pontificals, but merely, *v.g.*, in stole, like simple priests, such as consecrating chalices, vestments, etc. But they cannot, even though already consecrated bishops, perform those episcopal functions of order which require the use of pontificals, such as dedicating churches or conferring orders.[57] Finally, they cannot be styled archbishops until they have received the pallium.[58] Observe that, at the death of an archbishop, his perpetual coadjutor, if he has any, succeeds *ipso jure*—that is, without any new appointment from Rome or other formality—and hence becomes at once the Ordinary of the diocese, though before receiving the pallium he is under the disabilities above mentioned. However, the Holy See, when applied to, easily allows archbishops-elect in this country to exercise all the powers of archbishops, even before they receive the pallium.

[55] Supra, n. 293.

[56] Infra, n. 616.

[57] Ferr., v. Archiep., art. iii., n. 14.

[58] Phillips, Kirchenr., vol. vi., p. 844.

## CHAPTER V.

### OF BISHOPS.

### SECTION I.

### *Of the Office and Power of Bishops in General.*

#### ART. I.

#### *General Powers of Bishops.*

534. A bishop[1] (*episcopus, pontifex, summus sacerdos, antistes, pastor, angelus, praesul*) is defined: one who has received the plenitude of the priesthood as instituted by Christ for the government of the Church.[2] As a portion of the flock of Christ is usually assigned to a bishop, so also a special church, named cathedral, is set apart for him, where he may, as it were, in his own seat or *cathedra*, exercise pontifical functions.[3] The Pope alone can erect a church into a cathedral or designate the limits of a diocese.[4] Cathedral or episcopal sees should be situate in the larger cities only.[5]

535. *Nature of the Episcopal Power in general.*—The power of bishops, speaking in general, is twofold: (*a*) the power of order and (*b*) of jurisdiction. Whether bishops receive their jurisdiction immediately from God or the Pope we shall presently discuss (n. 540). Suffice it here to say with

[1] Phillips, Lehrb., p. 246; cfr. Ferraris, V. Episcopus, art. i., n. 1–14.
[2] Craiss., Elem., n. 397.
[3] Craiss., Man., n. 856.
[4] Ib., n. 857.
[5] Phillips, l. c., p. 248.

Schmalzgrueber:[6] "Sed tenenda est tanquam *verissima sententia*, quae cum communi TT. et canonistarum ait, potestatem jurisdictionis, quam habent episcopi, iisdem dari immediate ab Ecclesia seu Romano Pontifice."[7] Whatever opinion may be held, it is certain that bishops cannot validly exercise any episcopal jurisdiction without having been appointed by the Sovereign Pontiff to some see.[8]

536. What is meant in general, 1, by the *potestas ordinis*; 2, the *potestas jurisdictionis* of bishops? 1. The *potestas ordinis*, which bishops receive in their consecration directly from God,[9] consists chiefly in the power of administering the sacraments of confirmation (as ordinary ministers) and holy orders,[10] and of performing pontifical consecrations and blessings. These rights or powers, belonging exclusively to bishops, are named *jura propria*.[11] Powers which priests hold in common with bishops are called *jura communia—v.g.*, the administration of baptism, penance, and the like.[12] 2. The *potestas jurisdictionis*, which makes the bishop the pastor and judge of his diocese,[13] includes the power to govern the whole diocese; the right of visitation; the legislative, judicial, and executive authority; the right to erect and confer parishes, to receive the customary revenues, to correct abuses, and decide causes;[14] the office of preaching; of maintaining the purity of faith throughout the diocese; of providing for the religious instruction of the faithful in schools, colleges, and the like. Hence, wherever the civil government, either entirely or even but partially, excludes the influence of the Church from schools, colleges, etc., it becomes the duty of bishops to endeavor, by all means in their power, to establish schools in which secular teaching is not opposed to the principles of faith.[15]

[6] Lib. i., tit. xxxi., n. 26.
[7] Cfr. Can. *Omnes* 18, dist. 22; Can. *Loquitur* 1, c. xxiv, q. 1.
[8] Bouix De Episc., vol. i., p. 32. [9] Reiff., l. c., n. 68. [10] Ib., n. 65.
[11] Phillips, Kirchenr., vol. vii., p. 51. [12] Walter, p. 273. [13] Reiff., l. c., n. 66.
[14] Phillips, Lehrb., p. 253. [15] Phillips, Kirchenr., vol. vii., pp. 44-47.

537. *Q.* Are bishops superior to priests?

*A.* Affirmatively. This is *de fide*, being thus defined by the Council of Trent:[16] "If any one saith that bishops are not superior to priests, let him be anathema." It is true that in the primitive ages of the Church bishops were not, in name (*quoad nomen*), distinguished from priests.[17] This, however, was not owing to a belief that priests were of the same dignity with bishops; for, as to the power or dignity (*quoad rem*), a distinction was always recognized between the two, even from the very beginning of the Church and in the time of the apostles.[18]

538. *Q.* In what respect are bishops, *jure divino*, superior to priests?

*A.*—1. In the *potestas ordinis;*[19] for bishops can administer certain sacraments—*v.g.*, orders and confirmation—which priests cannot validly administer.[20] 2. In the *potestas jurisdictionis;* for Christ willed that dioceses, and, therefore,[21] not only laics, but also priests and ecclesiastics in general, should, as a rule, be governed by bishops as ordinary pastors.

## Art. II.

### *Are Bishops the Successors of the Apostles?—From whom do Bishops hold?*

539. *Q.* In what sense are bishops the successors of the apostles?

*A.*—I. It is certain that,[22] in some sense, bishops are the successors of the apostles; but in what sense? Before an-

[16] Sess. xxiii., can. vii.; ib., cap. iv.
[17] Ferraris, V. Episcopus, art. i., n. 28–32.
[18] Dionysius, De Eccl. Hierarch., cap. iv., ap. Ferraris, l. c., n. 30.
[19] Craiss., n. 861. [20] Bouix, l. c., pp. 34–41. [21] Ib., p. 109.
[22] Conc. Trid., sess. xxiii., cap. iv.

swering we premise: Three powers must be distinguished[23] in the apostles: 1, the *potestas sacerdotii*, or the power to consecrate the body and blood of our Lord and forgive sins;[24] 2, the *potestas ordinis episcopalis*, or the plenitude of the priesthood—*i.e.*, the power to ordain priests, confirm, etc.; 3, the *potestas apostolatus—i.e.*, the power to forgive sins everywhere, appoint bishops all over the world, etc.; in a word, the power to exercise, subordinately to Peter jurisdiction without any limit as to place, persons, or matters (*jurisdictio universalis*).[25] These three powers were given the apostles by Christ himself. II. Having premised this, we reply: 1. Bishops are, as a body, not as individuals, the successors of the apostles; in other words, the *collegium episcoporum* succeeded the *collegium apostolorum*.[26] Hence, with the exception of the Roman Pontiff and perhaps the Bishop of Jerusalem, no individual bishop can claim to be the successor of the apostles in the sense that the see occupied by him had one of the apostles for its first bishop.[27] It cannot be said, therefore, that this or that bishop is the successor, *v.g.*, of Andrew or John. 2. Bishops are the successors of the apostles, as to the *potestas ordinis*.[28] For bishops have, by virtue of their consecration, the same *character episcopalis*[29] with the apostles, and hence the same power of order. 3. Bishops, moreover, are the successors of the apostles, *quoad potestatem jurisdictionis*, though not *quoad aequalitatem*, but only *quoad similitudinem jurisdictionis*.[30] We say, only *quoad similitudinem jurisdictionis*, for the jurisdiction of the apostles, as we have shown, was *universal;* as such it was extraordinary, personal, and therefore lapsed with the apostles. The jurisdiction of bishops,

[23] Suarez, De Fide, part i., disp. x., sect. 1, 2.
[24] Cfr. Bouix, l. c., pp. 46, 47.
[25] Phillips, Kirchenr., vol. i., pp. 176, 177.
[26] Soglia, vol. i., p. 265.
[27] Bouix, l. c., p. 48.
[28] Ib., p. 53; cfr. Soglia, l. c., p. 266.
[29] Phillips, l. c., pp. 173, 174.
[30] Reiff., l. c, n. 76; cfr. Bouix, l. c., p. 53.

on the other hand, is *particular;* what the apostles could do all the world over bishops can do only in their respective dioceses.[31] Hence, the authority of bishops, as we have said, is *similar*, but not *equal*, to that of the apostles.

540. *Q.* Do bishops receive jurisdiction[32] immediately from God or from the Pope?

*A.* There are two opinions.[33] The *first* holds that the jurisdiction itself of bishops is communicated to them directly by God, and that in their consecration; but that the exercise of jurisdiction depends upon the authority of the Roman Pontiff. Hence, according to this opinion, the entire *jurisdictio episcopalis* is conferred upon bishops immediately by God;[34] the assigning of territory and subjects for the exercise of jurisdiction belongs to the Pope.[35] The *second* affirms that bishops receive jurisdiction itself, as well as the right to exercise it, immediately or directly from the Pope, and that by their appointment or preconization.[36] *Observations.*—1. This question is not one of mere words, but of very practical bearing. For, if the second opinion be admitted, it follows that the jurisdiction of bishops may be validly (though not licitly) restricted, or even entirely withdrawn, by the Pope without a *causa justa;*[37] while, according to the first, such action of the Pope would be invalid as well as illicit. 2. It does not, however, follow from the second opinion that bishops are but vicars of the Pope; for it involves no repugnance to say Christ willed that bishops should hold directly of the Pope, and at the same

[31] Phillips, l. c., pp. 174, 189.

[32] We say, jurisdiction; for it is certain that bishops receive the *potestas ordinis* directly from God, and that in their consecration. (Salz., lib. ii., p. 134.)

[33] We speak here of jurisdiction as vested in bishops *individually*, prescinding from the question as to how jurisdiction is conferred upon bishops *as a body*. (Craiss., n. 868.)

[34] Cfr. supra, n. 242.

[35] Bouix, l. c., pp. 55, 56.

[36] Cfr. Salzano, lib. ii., pp. 134–137.

[37] Bouix, l. c., pp. 60, 61.

time that the Pope should ordinarily appoint bishops not merely as vicars *ad nutum revocabiles*,[38] but as pastors who should govern their dioceses *proprio nomine* and be irremovable except for cause. 3. Our Lord, in fact, willed that, as a general rule, dioceses should be committed to bishops to be governed by them as ordinary pastors. We say, *as a general rule;*[39] for, in extraordinary cases—*i.e.*, exceptionally and for just cause—the Pope may entrust the government of this or that diocese to a priest, vicar-apostolic, or chapter;[40] but he cannot simultaneously depose all the bishops of the world, and rule all the dioceses of Christendom by vicars or delegates.[41]

541. *Q.* Have bishops immediate or but mediate jurisdiction over the members of their dioceses?

*A.* Some writers erroneously assert that parish priests, not bishops, have, *jure divino*, the direct charge or care of the faithful; that bishops, in consequence, are merely to see that parish priests fulfil their parochial duties, and, if need be, to remedy the negligence of pastors.[42] That this is false appears, 1, from the fact that parish priests are of ecclesiastical institution only, did not exist prior to the fourth century, and therefore have not, *jure divino*, the immediate care of souls. Bishops alone, in the first ages of the Church, either personally or through others, exercised the *cura animarum*. 2. Again, it is admitted that a bishop may, even without the consent of the pastor, either personally or through others, perform parochial functions—*v.g.*, preach,[43] baptize, hear confessions, celebrate marriages, etc., in every church and parish of his diocese. 3. Nay, he may order, even against the wish of the parish priest, extraordinary exercises to be held in a parish, such as retreats, missions, and the like.[44]

[38] Bouix, l. c., pp. 76, 77.
[39] Ib.; cfr. Conc. Trid., sess. xxiii., cap. iv.
[40] Ib., l. c., p. 82.
[41] Ib., p. 109; Craiss., n. 880.
[42] Craiss., n. 873.
[43] Ib.
[44] Ib., n. 874.

Now, all this necessarily supposes that he has immediate jurisdiction throughout his diocese. What has been said applies, *à fortiori*, to the United States. As a rule, two bishops cannot be placed over the same diocese. We say, *as a rule;* the exceptions are: 1. Where the faithful are of different rites or have different languages.[45] Where the faithful are merely of different nationalities, the bishop should appoint a special vicar-general or secretary for those of a different nationality. 2. Where a coadjutor is given to a bishop who is sick or otherwise disabled.

542. *Q.* What constitutes the essence of the episcopate?

*A.*—1. It is of faith that the *sacerdotium* pertains to the essence of the episcopal office.[46] No one but a priest can be a bishop. Hence, no layman, or even deacon, elected as bishop, was ever regarded as a true bishop except after being ordained a priest. 2. Not only the *sacerdotium*, but the *plenitudo sacerdotii*, is essential. For bishops, as we have seen, are, *jure divino*, superior to priests, *potestate ordinis.* The *sacerdotium* of bishops, therefore, is fuller and more perfect than the *sacerdotium* of priests, and is properly termed the fulness or complement of the priesthood (*plenitudo sacerdotii*).[47] 3. The *plenitudo sacerdotii* essential to the episcopate is the *plenitudo sacerdotii* not merely as directed to the exercise of the *potestas ordinis*,[48] but as ordered to the exercise of the *potestas jurisdictionis* or the government of the Church. 4. Hence, the episcopal dignity is correctly defined: The plenitude of the priesthood, as instituted by Christ for the government of the Church.[49] The above remarks will also explain the definition of a bishop given by us.[50]

[45] Craiss., n. 878, 879.
[46] Bouix, l. c., p. 89.
[47] Cfr. Conc. Pl. Balt. II., n. 82.
[48] Bouix, l. c., pp. 89, 90.
[49] Ib., p. 91.
[50] Supra, n. 534.

## SECTION II.

### *Of the Rights and Duties of Bishops in Particular.*

543. Some of these rights and duties emanate from the *potestas ordinis*, and are divided into *jura ordinis communia—v.g.*, the administration of penance, the care of souls, and into *jura ordinis reservata* or *propria—v.g.*, the conferring of orders; others from the *potestas jurisdictionis—v.g.*, the legislative, judicial, and executive authority.[61] We pass to the several duties.

### ART. I.

### *Duty of Residence—De Obligatione Residendi.*

544. In order that bishops may be able to properly discharge their duties, they are, even though they be cardinals, bound, at least[62] *jure ecclesiastico*, to reside in their dioceses. The residence to which they are obligated is therefore not merely a material and otiose, but a formal and laborious, residence[63]—*i.e.*, they are bound not only to live in their dioceses, but also to discharge their duties therein.[64] The bishop fulfils the precept of residence by residing in *any part of his diocese;*[65] he is not obliged to live in his episcopal city, though he should not remove from it his vicar-general or tribunal.[66]

545. *How long and for what causes Bishops may absent themselves from their dioceses.*—I. Bishops may, for just causes, and when it can be done without detriment to their flocks, be absent from their dioceses three months every

[61] Gerlach, Lehrb., pp. 312–320.

[62] Craiss., n. 882.

[63] Bouix, De Episc., vol. ii., p. 5.

[64] Cfr. Conc. Trid., sess. xxiii., cap. i., d. R.

[65] Thus, the Council of Trent says that bishops are bound to personal residence "in sua ecclesia *vel* dioecesi" (l. c.)

[66] Bouix, l. c., pp. 5, 6.

year, either continuously or interruptedly,[57] and without any permission whatever, whether from the Holy See or the metropolitan.[58] We said above, *for just causes.* Some canonists[59] consider the need of mental relaxation a sufficient cause for an absence of three months; others for but one month. This absence should not occur during Advent or Lent, or on Christmas, Easter, Pentecost, and Corpus Christi.[60] II. At times bishops may, for certain causes,[61] be absent more than three months in the year. Now, what are these causes? 1. Christian charity (*Christiana caritas*)—*v.g.*, to convert heretics, establish peace[62] among Christian rulers. 2. Urgent necessity (*urgens necessitas*)—*v.g.*, if a bishop is persecuted or obliged by reason of ill health to change climate.[63] 3. Obedience due others (*obedientia debita*)—*v.g.*, if a bishop is called away by his lawful superior,[64] *v.g.*, by the Pope. 4. The evident utility (*evidens utilitas*) of the Church or the commonwealth—*v.g.*, the attending general or provincial councils, or even civil diets,[65] such as Parliament, Congress, etc. The Pope's permission in writing is, as a rule, requisite in all these cases.[66] III. They may, however, without the express permission of the Holy See, be absent more than three months in the year for the following causes: 1. In order to pay their prescribed visit to the Apostolic See (*ad visitanda sacra limina*). If their diocese is in Italy, they may be absent four months; if out of Italy, seven months. 2. To be present at oecumenical or provincial councils. 3. To assist at the conclave[67] (in case they are cardinals). We said above, *without the express permission;* for it is evident that the implicit permission is contained in

[57] Conc. Trid., sess. xxiii., cap. i., d. R.
[58] Ferraris, V. Episcopus, art. iii., n. 29.
[59] Bouix, l. c., p. 8; cfr. Conc. Trid., l. c
[60] Craiss., n. 887.
[61] Conc. Trid., l. c.
[62] Salzano, lib. ii., pp. 147, 148.
[63] Phillips, Lehrb., pp. 155, 156, n. 18–23.
[64] Ferraris, l. c., n. 6.
[65] Ib., n. 7, 8.
[66] Craiss., n. 890.
[67] Ib.

the very cause of the absence. These three cases may also be said to be included in the *debita obedientia.*[68]

546. *Q.* Is a bishop excused from the duty of residence on account of the danger of contracting a contagious disease?

*A.* He is not, even though he has a coadjutor. Although he cannot leave his diocese during a pestilence or other contagious disease (*tempore pestis*),[69] yet he may remain in those parts of the diocese which are safer and less exposed to the contagion.[70]

547. *Q.* Within what time are newly-appointed bishops bound to proceed to and take up their residence in their diocese?

*A.* Those who are at the Roman court must do so within a month from the day of their promotion;[71] those who live in Italy, but out of Rome,[72] within two months; others, finally, who dwell out of Italy, within four months.[73]

548. *Q.* What penalties are incurred by bishops who violate the law of residence?

*A.* Besides committing a mortal sin, they forfeit the fruits of their benefice[74] (with us, their income as bishops—*i.e.*, their salary) in proportion to the time of their absence;[75] hence, they cannot retain such income or salary, but are bound, or in their default their ecclesiastical superior (*i.e.*, the metropolitan[76]) for them, to apply them (*i.e.*, fruits, salary) to the fabric of the churches or to the poor of the place—*i.e.*, of the diocese.[77] This penalty is *latae sententiae.*[78] But if a bishop is unlawfully absent *more than a year*, the metropolitan must denounce him to the Roman Pontiff,

[68] Ferraris, l. c., n. 7, 8, 9; cfr. Salzano, l. c., p. 148.
[69] Ferraris, l. c., art. iii., n. 12, 13. [70] Bouix, De Episc., vol. ii., pp. 16, 17.
[71] Ib., pp. 17, 18. [72] Cfr. Craiss.. n. 893. [73] Cfr. Ferraris, l. c., n. 18.
[74] Salzano, l. c., p. 149. [75] Phillips, Lehrb., p. 156. [76] Ib.
[77] Conc. Trid., sess. xxiii., cap. i., d. Ref.; cfr. ib., sess. vi., cap. i., d. Ref.
[78] Salzano, l. c., p. 149.

either by letter or messenger,"[79] within the space of three months, so that the Pope may proceed against the said non-resident prelate, and even depose him."[80] If the metropolitan himself be thus absent, he must be denounced by the oldest resident suffragan bishop. The precept of residence is undoubtedly also obligatory on the bishops of the United States.[81]

549. *Q.* Can bishops in the United States absent themselves from their dioceses more than three months in the year with the permission merely of the metropolitan, or, in his absence, of the oldest resident suffragan bishop, but without that of the Pope?

*A.* They cannot. The Council of Trent,[82] it is true, enacted that the permission of the Pope *or* metropolitan was required; but herein the council was amended by Pope Urban VIII.,[83] who decreed that the Roman Pontiffs *alone* could give the requisite permission.[84] Father Konings,[85] however, maintains the contrary; the distinguished moralist quotes, in favor of his opinion, decree 91 of the Second Plenary Council of Baltimore, which simply contains or gives the Tridentine decree on residence, without the emendation of Urban VIII.

## Art. II.

### *Duty of Visiting the Diocese* ("*De Episcopali Dioecesis Visitatione.*")

550. *Definition and Object of Episcopal Visitations.*—A bishop, in order to be able to properly govern his diocese,

[79] Phillips, l. c.

[80] Ferraris, V. Episcopus, art. iii., n. 35, 36

[81] Conc. Pl. Balt. II., n. 191; cfr. Conc. Pl. Balt. I., n. 5.

[82] Sess. xxiii., cap. i., d. R.

[83] *Const. Sancta Syn*, 1634; cfr. Craiss., n. 889.

[84] Bouix, l. c., p. 16.

[85] Theol Mor., n. 1134 (4)

and report correctly to the Holy See[86] when he pays his visit *ad sacra limina*, should be well informed of the state of his diocese. Now, he can best inform himself on this head by travelling over his diocese, and thus personally inspecting the condition of its various churches (*visitatio episcopalis*). In the East, bishops from the earliest times deputed priests (*visitatores*) to make the visitation; while in the West bishops were already, in the sixth century, obligated to personally traverse or visit their dioceses. These visitations, which had, to some extent,[87] fallen into desuetude, were re-established by the Council of Trent,[88] and made obligatory on bishops and others having the right to make visitations. The object of visitations is chiefly to maintain sound doctrine and preserve good morals, correct abuses, etc.

551. *Q.* Who have the right to make visitations?

*A.* All ecclesiastical prelates who have *jurisdictio ordinaria* over persons.[89] The vicar-capitular, *sede vacante*, also has this right.[90] The vicar-general, however, has no such right,[91] except when specially commissioned to that effect by the bishop. Bishops are obligated to visit their dioceses personally,[92] unless they are lawfully hindered from doing so—*v.g.*, by sickness. How often is a bishop bound to visit his diocese? A bishop not only can, but is obligated, either personally or through others, whether priests or deacons, to visit once every year, or, if his diocese be very large, once every two years, his entire diocese and its churches.[93]

552. *Q.* Are bishops in the United States bound to visit their dioceses? How often?

*A.*—1. They are: "Meminerint episcopi se dioeceses suas visitare *districte teneri*, non solum ut confirmationis sacramentum administrent, verum etiam ut gregem sibi creditum

[86] Phillips, Lehrb., p. 255, § 135.
[87] Ib., pp. 256, 257.
[88] Sess. xxiv., cap. iii., d. Ref.
[89] Ferraris, V. Visitare, n. 1, 2
[90] Ib., n. 9.
[91] Ib., n. 19.
[92] Soglia, vol. ii., p. 16.
[93] Ferraris, l. c., 18.

bene cognoscant."[94] 2. They are bound, according to the *Third Plenary Council of Baltimore*,[95] to visit their whole diocese at least once every *three years*. Where the common law of the Church obtains on this point—that is, the c. 3, C. Trid., sess. xxiv.—bishops are bound to visit their entire diocese at least once every *two years*.[96]

553. *Q.* What persons and places are, in general, visitable by the bishop?

*A.* Visitations are of two kinds, personal and local. The first (*visitatio personalis*) is an examination into the conduct of persons, etc.; the second (*visitatio realis* or *localis*), into the condition of churches, into the administration of church property, etc.[97] Having premised this, we answer: I. The following persons are subject to personal visitations: all the faithful, but especially the entire secular clergy of the diocese;[98] also regulars, in matters pertaining to the care of souls. Hence, regulars who have charge of congregations may be corrected by the bishop, if they neglect any of their parochial duties. II. The following places are, as a rule, subject to local visitations: 1. All church edifices within the diocese.[99] 2. All other ecclesiastical institutions—*v.g.*, hospitals, asylums, protectories.[100] 3. As to exempt places—*v.g.*, monasteries where the monastic discipline is transgressed—the bishop can only urge the regular superior to correct such abuses and cause the rules of the institute to be observed;[101] and if, within six months, the regular superior fails to visit and correct his delinquent subjects, the bishop can do so, if the monastery is *sub commenda*.[102] 4. Regulars living permanently out of their monasteries are visitable by the bishop.[103] 5. Convents of non-exempt nuns are in every re-

[94] Conc. Pl. Balt. II., n. 86.
[95] C. Pl. Balt. III., n. 18.
[96] Bouix, l. c., p. 25; cfr. Craiss., n. 900, 901.
[97] Soglia, l. c., p. 17.
[98] Ib.; cfr. Salzano, lib. ii., p. 149.
[99] Phillips, l. c., p. 257.
[100] Soglia, l. c., pp. 17, 18.
[101] Phillips, l. c., pp. 257, 258.
[102] Conc. Trid., sess. xxi., cap. viii., d. R.
[103] Craiss., n. 903.

spect subject to the episcopal visitation;[104] this applies to all female religious communities in the United States.

554. *Q.* What are the various things to be inspected or enquired into during the episcopal visitation?

*A.*—1. Ecclesiastical places (*loca*)—*v.g.*, church edifices; 2, ecclesiastical things (*res*)—*v.g.*, tabernacles, baptismal fonts, missals, vestments, and the like, in churches; 3, the official conduct of clergymen in charge of congregations. The bishop should, therefore, see whether pastors and assistants properly discharge their functions (*munera*) as regards the administration of the sacraments, of church property, and the like; 4, the private conduct or the morals of the clergy and laity (*personae*).[105]

555. *Q.* Is an appeal admissible against the acts and decrees of the bishop on visitation? What is to be done after the visitation is finished?

*A.*—1. The episcopal visitation should be a *paternal* examination into the state of parishes and other ecclesiastical institutions of the diocese;[106] hence, he should dispense with formal trials and judicial penalties. But, if he proceeds judicially, *or* inflicts regular penalties, as dismissal from parish,[107] an appeal lies, even *in suspensivo;* otherwise, only *in devolutivo.*[108] 2. After the visitation, an authentic account of it should be drawn up,[109] to enable the bishop, in his *visitatio sacrorum liminum*, to give the Pope an accurate report of the state of the diocese.[110] 3. The bishop cannot receive anything for the visitation, save food or hospitality[111] (*procuratio, victualia*); and in places where it is the custom

[104] Bouix, l. c., p. 31.
[105] Phillips, l. c.
[106] Phillips, Lehrb., p. 258; cfr. Salzano, l. c., p. 149.
[107] Bouix, de Episc., t. 2, p. 35.
[108] Supra, n. 447.
[109] Craiss., n. 914.
[110] C. Pl. Balt. III., n. 18; Phillips, l. c., p. 255.
[111] Or its equivalent in money, where those who are visited prefer giving money rather than hospitality. (Soglia, l. c., p. *9; cfr. Conc. Trid., sess. xxiv., cap. iii., d. R.)

that nothing whatever be received by him, such custom should be observed. (See C. Pl. Balt. III., n. 18.)

## ART. III.

### *Of the Obligation Incumbent on Bishops to Visit the Holy See.*

556. The duty resting on bishops to make the *visitatio liminum* consists chiefly,[112] 1, in the visit itself, or journey to the Holy See; 2, in their submitting to the Pope an accurate statement of the condition of their dioceses (*relatio status Ecclesiae*). By the *limina apostolorum* we mean the place where the Pope resides.[113] What persons are obliged to make the visit *ad limina?* It is certain that, at the present day, patriarchs, primates, archbishops, and bishops, even though they be cardinals,[114] are bound, *sub gravi*, to make the *visitatio sacrorum liminum* at stated times. The bishops of the United States are obliged to make this *visitatio* every ten years, as was seen. These ten years must, in all cases, be computed from the day on which the Const. *Romanus Pontifex* of Sixtus V. was published, namely, from December 20, 1585. Again, the visitation need be made but *once* within every given space of ten years from December 20, 1585. For the principal object of the visitation is to make a full report to the Holy See once every ten years of the state of the diocese. Consequently once this decennial report has been made during the respective decennial term, *v.g.*, during the term beginning with December 20, 1885, and ending with December 20, 1895, it need not be made over again during the same decennary.[115]

## ART. IV.

### *Duties of Bishops in regard to the Management of Ecclesiastical Seminaries—Of Seminaries in the United States.*

557. The supervision of seminaries is one of the chief duties of bishops. The history of episcopal seminaries is divided chiefly into two periods: one prior, the other sub-

[112] Ferraris, V. Limina Apostolorum, n. 9 [113] Ib., n 29 [114] Ib., n 5. 30.
[115] Inst. S. C. de Prop. Fide, June 1. 1877; Conc. Pl. Balt. III., n 13. 17.

sequent, to the Council of Trent.[118] I. *Episcopal Seminaries before the Council of Trent.*—Seminaries—*i.e.*, houses set apart for the education of youths wishing to embrace the ecclesiastical state—are traced by some canonists[119] to the very beginning of the Church; by others to the Council of Nice (A.D. 325); and by several to St. Augustine, who, according to Phillips,[120] had set apart a place in his episcopal residence, where youths were brought up for the priesthood. That seminaries existed already in the sixth century is indisputable.[121] Thus, the Second Council of Toledo,[122] in Spain, ordained that boys dedicated by their parents to the service of the Church should be brought up under the tuition of a director, in a house belonging to the cathedral, and under the eye or supervision of the bishop.[123] Nay, it is certain that, in the sixth century, youths destined for the sacred ministry were educated for the priesthood not only in episcopal colleges or seminaries, but in every parish priest's house. This was the custom throughout almost the entire Latin Church.[124] Episcopal seminaries, which had, since the eighth century, come to be superseded by universities,[125] were re-established and placed on a more solid footing by the Council of Trent. II. *Seminaries after the Council of Trent.*—By seminaries we mean, at present, schools or colleges[126] where youths destined for the priesthood are maintained, educated religiously, and trained in ecclesiastical discipline.[127]

[118] Phillips, K. R., vol. vii., p. 90; cfr. our Notes, n. 148–155.

[119] Salzano, lib. iii., p. 186.

[120] L. c., p. 95.

[121] Craiss., n. 924; cfr. Devoti, lib. ii., tit. xi., n. 1, note 3.

[122] Conc. Tolet. II., A.D. 531; cfr. Conc. Tolet. IV., A.D. 633; cfr. Thomassinus, Vetus et Nova Ecclesiae Disciplina, part i., lib. iii., cap. v.; part ii., lib. i., cap. cii. Lucae, 1728.

[123] Phillips, l. c., pp. 95, 96. The words of the Council are: *Debeant* [*i.e.*, the boys] *erudiri in domo Ecclesiae, sub episcopali praesentia a praeposito.* (Cfr. Craiss., l c.)

[124] Salzano, l. c., p. 186; cfr. Conc. Vasense II., A.D. 529.

[125] Bouix, l. c., p. 68.

[126] Ib.

[127] Conc. Trid., sess. xxiii, cap. xviii, d. Re-

558. *Q.* What are the principal enactments of the Council of Trent in regard to seminaries?

*A.*—1. A bishop may have several seminaries; but he is bound to have at least one, unless the poverty of the diocese makes it impossible. 2. A common seminary should be established by the provincial council for those dioceses which, on account of poverty, cannot have their own. 3. Those only should be received into seminaries whose character and inclination afford a hope that they will always serve in the ecclesiastical ministry. Hence, colleges where ecclesiastical students are educated promiscuously with secular students are not seminaries in the Tridentine sense of the term. 4. Not only students of theology, but also of classics, should be admitted. 5. Youths to be received should be at least twelve years old and should at once wear the clerical dress.[128]

559. *Management of Seminaries.*—Three committees are to be appointed: one for the spiritual, two for the temporal administration.[129] 1. The committee on the spiritual direction of the seminary consists of two canons of the cathedral chapter, chosen by the bishop. The bishop is obliged[130] to hear the advice of this committee or commission, in regard to the following matters chiefly: The laying down of the general rules for the seminary; the admission of alumni; the choice or selection of the books to be used; the punishment of delinquents; the appointment and removal of professors, confessors, and the like.[131] 2. The first committee on temporal management of the seminary is composed of four members—namely, of two canons, one of whom is chosen by the bishop, the other by the chapter;[132] and of two clergymen of the city, one of whom is selected by the

[128] Conc. Trid., l. c.; cfr. Bouix, l. c., pp. 69, 70, 71.

[129] Bouix, De Capitulis, p. 424 Paris, 1862.

[130] Craiss., n. 929.

[131] Bouix, l. c., pp. 430, 431.

[132] Ib., p. 433 seq.

bishop, the other by the clergy of the whole diocese. The bishop is bound to hear the advice of this committee, chiefly on these matters:[133] The contributions or assessments to be made for the support of the seminary; the daily or current expenses of the seminary; the administration of the entire property and income of the seminary; in a word, the *whole* temporal management.[134] The second committee on temporal management is also made up of four members, two of whom are selected by the chapter and two by the clergy of the city. It is a sort of auditing committee, and should be present when the administrators of the seminary hand in their annual financial statement to the bishop.[135] *Observation.*—1. The bishop is obliged, even for the validity of his acts, to hear the advice of these committees: but he is not bound to follow it. 2. The members of the first and second committees are irremovable except for cause.[136]

560. *Q.* Can bishops place religious communities in charge of seminaries?

*A.* They can, under certain conditions. We say, *under certain conditions;*[137] for religious congregations do not, as a rule, undertake the direction of seminaries, save on condition[138] that their superior-general shall have the right to appoint the rector and the professors; that they shall be allowed to manage the seminary without any of the above committees; finally, that the government of the seminary cannot be taken from them except for cause. Now, all these conditions are evidently contrary[139] to the above-mentioned enactments of the Council of Trent. As bishops have no power to derogate from the jus commune—*i.e.*, the Tridentine decrees—it follows that seminaries can be given

[133] Bouix, p. 438; cfr. ib., De Episc., vol. ii., pp. 71, 72.
[134] Craiss, n. 930; cfr. Soglia, vol. ii., pp. 282–284.
[135] Conc. Trid., sess. xxiii., cap. xviii., d. Ref.
[136] Craiss., n. 933, 935.
[137] Ib., n. 935.
[138] Bouix, De Capitulis, p. 443 seq.
[139] Bouix, De Episc., vol. ii., p. 73.

over to religious congregations only by authority of the Holy See. When, therefore, a bishop wishes to entrust the direction of a seminary to a religious body,[140] he should enter into an agreement with the regular prelate of the order or the superior of the congregation; the articles of agreement should then be sent to the *S. Congr. Concilii* (with us, to the Propaganda); and, when approved by this tribunal, they become permanent law, from which neither the bishop nor his successors can recede.[141]

☞ 561. *Q.* What are the chief enactments of the *Third Plenary Council of Baltimore* respecting seminaries in the United States?

*A.* We premise: With us there are two kinds of seminaries—namely, major and minor. In the former philosophy and theology, in the latter classics are taught.[142] As a matter of fact, but few preparatory or small seminaries exist, the classics being frequently learned by youths studying for the priesthood, in colleges or institutions, which, though under the direct control of bishops and priests, serve chiefly for the education of secular students. Again, prior to the *Third Plenary Council of Baltimore* there were *no committees;* the bishop, rector, or procurator conducted the temporal as well as the spiritual administration.

562. We now answer: 1. Every diocese should, if possible, have its own major and minor seminary set apart exclusively for the education of ecclesiastical students. Where this is impossible, one higher and one preparatory seminary should be established in each province.[143] However, the *Third Plenary Council* allows young men studying for the priesthood to study their classics at secular colleges, wherever, owing to want of means, small or preparatory seminaries, which are exclusively for ecclesiastical students, cannot as yet be erected.[144] 2. In the preparatory seminaries (where they exist), the course of studies shall not be less than six

[140] Cfr. Conc. Pl. Balt. II., n. 408.
[141] Craiss., n. 935.
[142] C. Pl. Balt. II., n. 175, 176, 177.
[143] C. Pl. Balt. III., n. 139, 155.
[144] Conc. Pl. Balt. III., n. 153.

years, and comprise the vernacular (English, and in some instances, also the German, Polish, French, and Italian languages);[144] in the major seminaries, the course of studies shall also be six years, two for philosophy, and four for theology.[145] 3. For each seminary, major or minor, diocesan or provincial, *two committees* must be appointed; each committee to consist of at least *one priest.* In the case of diocesan seminaries, the members of these committees are appointed by the bishop *with the advice of the diocesan consultors;* in the case of provincial seminaries, by the bishops of the province, without the advice of the consultors. One of these committees has the right and duty of advising the bishop in all that concerns the *spiritual government* of the seminary, as explained above (n. 559); the other, in all that regards the *temporal management*, as outlined above, n. 559. We said above, n. 559, that the advice of the committee on temporal management is necessary in regard to the contributions or assessments to be made for the support of the seminary. This needs explanation. The bishop is bound to take the advice of this committee in *imposing* the tax, and that both as regards the gross amount to be raised, and the rate at which each church is to be assessed. But once he has thus fixed the amount and the rate, he can collect it without the advice of the deputies.[146] Bishops, with us, are indeed obliged to take the advice of these committees under pain of having their acts annulled; but they are not bound to follow it. 4. Seminarians are allowed to go home during the vacations. But while on vacation they are placed under the supervision of their parish priest, to whom they must present themselves, at the beginning of the vacation, and by whom they may be employed in teaching catechism, serving at the altar, etc. At the end of the vacation, the parish priest is obliged to inform the bishop, or the superior of the seminary, by sealed letter, of the conduct, etc., of the seminarian. (C. Pl. Balt. III., n. 177.)

[144] Conc. Pl. Balt. III., n. 147. [146] Bouix, De Cap., p. 439.

## ART. V.

*Rights and Duties of Bishops as regards the holding of Diocesan Synods (De Officio et Potestate Episcopi quoad Synodum Dioecesanam).*

563. *Definition.*—Those meetings[153] are called diocesan synods (*synodus dioecesana*) where the bishop assembles the clergy of his diocese in order to treat of matters that relate to the pastoral charge or the care of souls.[154] The word *council* is at present applicable only to oecumenical, national, and provincial synods, but not to diocesan assemblies.[155] The enactments of diocesan synods are named statutes (*statuta*), decrees (*decreta*), constitutions (*constitutiones*). The term canons is at present applied to those decrees only which are binding on the entire Church—*v.g.*, those of oecumenical councils.[156]

564. *Q.* How often are diocesan synods to be held in the United States?

*A.*—1. Once every year,[157] wherever this is feasible. 2. "Quoad si, ob locorum distantiam aliaque peculiaria rerum adjuncta, magno foret incommodo synodum quotannis celebrare, curent episcopi, *ut saltem post habitum ac a Sancta Sede recognitum concilium provinciale sive plenarium, quam levissima interposita mora, synodum convocent dioecesanam,* in quo statuta provincialia seu plenaria omnibus promulgentur, atque executioni dentur."[158] Again, we ask, Is the Tridentine decree enjoining the *annual* celebration of diocesan synods

[153] See our article on Dioc. Syn. in *Brownson's Quarterly Review*, July, 1875, p. 314 seq.

[154] Craiss., n. 80; cfr. our Notes, n. 37.

[155] Bouix, l. c., pp. 348, 349.

[156] Bened. XIV., De Syn., lib. i., cap. iii., n. 3.

[157] Bishops neglecting to hold synods annually incur *suspensio ab officio*, which penalty is *ferendae*, not *latae sententiae* (Bened. XIV., l. c., cap. vi., n. 5; cfr. Conc. Trid., sess xxiv., c. ii., d. R.)

[158] Conc. Pl. Balt. II., n. 67; cfr. ib., n. 63.

obligatory, *sub gravi*, even at the present day? It is, wherever the holding of synods is practicable, and especially where, as in the United States, no hindrances of a political nature stand in the way. Some canonists, however, hold the negative, asserting that synods have almost everywhere fallen into desuetude.[159] Again, what persons have power to convene diocesan synods? 1. Bishops, as soon as they are confirmed, and even before they are consecrated;[160] they may depute vicars-general or other persons to convoke and preside over synods in their stead.[161] 2. Vicars-capitular, *sede vacante*, and in the United States, by analogy, administrators of dioceses.

565. *Q.* What persons in the United States are obliged to attend diocesan synods?

*A.*—1. "Praeter sacerdotes[162] curam animarum habentes,[163] sive sint saeculares sive regulares, omnes etiam in dignitatibus quibuscunque constituti, rectores etiam seminariorum, hujusmodi synodis interesse debent." 2. Also all superiors of monasteries situate in the diocese and not governed by a general chapter.[164] Observe, the bishop is the sole law-giver in these assemblies, and therefore he alone has a decisive vote; the other members have but a consultative voice.[165]

566. *Officials of Synods.*—There are two kinds of synodical officials:[166] I. The *officiales synodi—i.e.*, those who perform certain functions *in and during* the synod itself. These

[159] Cfr. Bouix, l. c., pp. 351, 352. [160] Phillips, Kirchenr., vol. vii., p. 204.
[161] Ferraris, V. Synodus Dioec., n. 13. [162] Conc. Pl. Balt. II., n. 66.
[163] By virtue of universal custom only pastors, not their assistants, are bound, as a rule, to attend. We say, *as a rule;* for, if a general reformation of the clergy is to be treated of, *all* ecclesiastics must attend. Cfr. Phillips, Lehrb., p. 354.
[164] C. Trid. sess. 24, c. 2. de Ref.; Bened. XIV., De Syn., l. 3. c. 1. n. 8.
[165] Ferraris, l. c., n. 42, 43.
[166] Gavantus, Praxis Exactissima Syn. Dioec., pars. i., cap. xviii., n. 1, 2; cap. xxx., n. 7; cap. xxxi., n. 1. Venetiis, 1668.

are, at present, chiefly the notary, secretary, promoter, and master of ceremonies; they are, as a rule, appointed in the preliminary meetings (*congregationes praesynodales*), usually held some time prior to the day fixed for the synod. II. The *officiales cleri* are those functionaries who are elected indeed in the synod, but whose duties begin only *at its end* and last *till the next synod.*[167] They are chiefly: 1. Synodical judges (*judices synodales, judices in partibus, judices prosynodales*[168]), to whom all cases of appeal from the decisions of ordinaries are committed by the Holy See; they are Papal delegates, and must not be confounded with our commissions of investigation, where the latter still exist.[169] 2. Synodical examiners (*examinatores synodales*), whose duty it is to conduct the examinations for appointments to parishes *in forma concursus.*[170] Where no synod is held, the bishop may, with the consent of his chapter—in the United States, with the *advice* of the consultors (Conc. Pl. Balt. III., n. 25)—appoint the synodical examiners out of synod,[171] provided he has previously obtained the permission of the Holy See.[172] 3. The *Third Plenary Council of Baltimore* counsels bishops to make use of the synodal examiners also for the examination of the *ordinandi*, of those who are to be approved for confessions, of the junior priests, and of the alumni who wish to be admitted into major seminaries.

*Appeals against Statutes of Diocesan Synods.*—It is allowed to appeal to the Holy See (according to Ferraris, not to the metropolitan) against statutes of diocesan synods;[173] such appeal, however, has only an *effectum devolutivum*, not *suspensivum*, and does not, therefore, suspend the obligation of complying with the statutes pending the appeal.[174]

[167] Gavant, l. c., cap. xxx., n 7.

[168] Cfr. Conc. Trid., sess. xxv., cap. x., d. R.; cfr. Phillips, Kirchenr., vol. vi., p. 769.

[169] Cfr. Instr. S. C. P. F., 1878.

[170] Cfr. Conc. Trid., sess. xxiv., cap. xviii., d. R.

[171] Salz., lib. i., p. 46.

[172] Conc. Pl. Balt. III., n. 25.

[173] Ferr., V. Syn., n. 44.

[174] Leo XIII., Const. *Romanos Pontifices*, 1881; Bened. XIV., De Syn., lib. xii., cap. v., n 12, 13.

567. *Theological Conferences.*—These serve to remedy, in a measure, the rarer celebration of diocesan synods. According to the *Third Plenary Council of Baltimore* (n. 191, 192, 193), 1, these conferences (*collationes de rebus theologicis*) should be held four times a year in cities, twice a year in rural districts; 2, all priests, whether secular or regular, having the care of souls, should attend them; 3, the bishop lays down the method to be observed, proposes the matters or questions to be discussed, and the like.[176]

## Art. VI.

### *Of the Legislative, Judicial, Executive, and Teaching Power of Bishops.*

568.—I. *Legislative Power.*—1. The bishop has power not only to publish in his diocese Papal constitutions and the decrees of oecumenical,[177] national, and provincial councils, but also, both *in* and *out* of synod, to enact laws for his clergy and people,[178] provided, however, his regulations be not opposed to the universal laws of the Church.[179] Constitutions enacted by the bishop *in synod* are permanent (*statuta perpetua*), though not immutable—*i.e.*, they do not cease to be of force at the death of the bishop, though they may be changed by the successor.[180] Are statutes made by the bishop *out of synod* also perpetual? The question is controverted.[181] 2. The bishop, not the civil authority, can order public prayers for the necessities of the Church, or because of other just reasons; prohibit abuses that may have introduced themselves in the administration of the sacraments, in the celebration of the Mass, and the like. He may, in general, ordain whatever tends to suppress vice, preserve virtue, and maintain true faith and ecclesiastical discipline. Can the

[176] Leo XIII., Const. *Romanos Pontifices*, § Praecipuam, 1881.
[177] Gerlach, l. c., p. 317.
[178] Our Notes, n. 82, 83.
[179] Bouix, De Episc., vol. ii., p. 80.
[180] Soglia, vol. i., p. 287.
[181] Bened. XIV., De Syn., lib. xiii., cap. v., n. 1, and lib. v., cap. iv., n. 3.

bishop make synodal statutes without the consent or advice of the chapter? We premise: 1. By synodal statutes we mean those which are at least promulgated in synod.[182] 2. We said *chapter*, because it is certain that neither the assent nor the advice of the other priests is requisite.[183] We now answer: 1. As a general rule, statutes may be issued in synod *without the consent* of the chapter; except, however, (*a*) when this consent is expressly required by law—*v.g.*, in the erection of a new parish; (*b*) where custom favors such consent.[184] 2. However, synodal constitutions are not valid if made *without the advice* of the chapter.[185] Though the bishop is bound to take this advice, he need not follow it[186] 3. So far as concerns the U. S., the *Third Plenary Council of Baltimore* enacts: "Consilium consultorum exquiret episcopus pro synodo dioecesana indicenda et publicanda."[187] Consequently synodal statutes, with us, are voidable, if made *without the advice* of the diocesan consultors.

569.—II. *Judicial Power.*—Suffice it to say here that all causes belonging in any way whatever to the ecclesiastical forum, even though they be *causae beneficiales, matrimoniales,* or *criminales,* are to be taken cognizance of, in the first instance, by the ordinaries of places.[188] III. *Executive or Coactive Power.*—The bishop, in his diocese, may enforce, under penalties and censures—*v.g.*, even under pain of excommunication, to be incurred *ipso facto*—the laws enacted by himself and those of the entire Church.[189] IV. *Teaching Power.*—By virtue of his *potestas magisterii,* the bishop is teacher and doctor in his diocese; out of general councils, however, he cannot define questions of faith or morals; furthermore, he cannot undertake to settle points freely dis-

[182] Craiss., n. 949. [183] Bouix, l. c., p. 390. [184] Craiss., n. 950, 951.
[185] Ib., n. 952. [186] Phillips, Lehrb., pp. 258, 259.
[187] Conc. Pl. Balt. III., n. 20.
[188] Soglia, l. c., p. 288; cfr. Conc. Trid., sess. xxiv., c. xx., d. R.
[189] Bouix, l. c., p. 80.

puted among theologians.[190] He can and should watch over schools, colleges, seminaries, and the like, and see that nothing is there taught contrary to faith, morals, and discipline.[191]

## Art. VII.

### *Of the Powers of Bishops to grant Dispensations.*

570. A dispensation is the relaxation of a law in some particular case where it would otherwise bind.[192] Dispensations can be granted by the proper superior only. Bishops can dispense from all laws made by themselves or their predecessors, whether in or out of synod; but not from enactments of popes or oecumenical councils, nor, in general, from the common law of the Church.[193] We say, *in general;* for bishops may dispense even from the *jus commune*[194] in the following cases: 1. *Ex jure id permittente—i.e.*, where the law itself, whether as enacted by the Sovereign Pontiffs[195] or oecumenical councils, either expressly, or at least tacitly[196]—*v.g.*, by saying *posse dispensari*—gives bishops power to grant dispensations. Thus, the Council of Trent[197] *expressly* permits bishops to dispense from the interstices to intervene between the reception of the various orders, whether minor or major; also to grant dispensations from the publication of the banns of matrimony.[198] 2. *By virtue of legitimate custom.* Thus, bishops dispense from the precept of fast, the observance of holidays, and the like. This custom, to be lawful, must be immemorial—*i.e.*, a hundred years old, and not subversive of ecclesiastical discipline. 3. *Ex praesumpta et interpretativa Pontificis delegatione.*[199] Thus, the Pope may

[190] Craiss., n. 954. [191] Ib., n. 955. [192] Ib., n. 957.
[193] Ferraris, V. Dispensatio, n. 23. [194] Soglia. vol. i., p. 290.
[195] Bouix, l. c., p. 92. [196] Ferraris, l. c., n. 26.
[197] Sess. xxiii., c. xi., d. R. [198] Ib., sess. xxiv., c. i., d. Ref. Matr
[199] Ferraris, l. c., n. 27.

reasonably be presumed to authorize bishops to grant dispensations in urgent cases which admit of no delay. Thus, a bishop may, under certain conditions, relax an occult impediment annulling a marriage already publicly contracted. Again, bishops, by virtue of the presumptive consent of the Holy See, may dispense in matters of less importance and of frequent occurrence.[200] 4. *By virtue of special delegation—i.e.*, of special faculties given to bishops by the Holy See[201]—*v.g.*, the *facultates* given to bishops in the United States, for five or ten years, or only for a certain number of cases.[202] 5. *In cases where it is doubtful whether a dispensation is needed.* In cases of this kind bishops may either grant a dispensation for the sake of greater safety (*ad cautelam*), or simply declare that no dispensation is required.[203] We observe: 1. Bishops, in cases n. 1, 2, 3, 5, can dispense from the *jus commune* (*a*) for just reasons only, (*b*) and not universally—*i.e.*, not for an entire diocese, city, or community, but only for individuals.[204] 2. The power of dispensing in cases n. 1, 2, 3, 5, as vested in bishops, is a *potestas ordinaria*, and therefore, *sede vacante*, passes to the chapter; for the same reason it may be delegated to others.[205]

571. Can bishops, without having special faculties from the Holy See, grant dispensations from the law of fast, of abstinence from flesh-meat and white meats (*ova et lacticinia*), and from the precept of abstaining from servile labor on festivals of obligation? 1. They can grant these dispensations to *particular persons*, and that by virtue of universal custom, sanctioned by the Holy See; for it were morally impossible to recur to Rome for a dispensation in every particular case.[206] 2. Bishops cannot, however, dispense from the

[200] Craiss., n. 966.

[201] Phillips. Lehrb., p. 178; cfr. Gerlach, Lehrb., pp. 176, 293, 294.

[202] Cfr. our Notes, pp. 463–476.

[203] Ferraris, l. c., n. 23.

[204] Soglia, l. c., p. 290.

[205] Ferraris, l. c., n. 30

[206] Bouix, l. c., p. 96.

above laws *in a general manner*[307]—*i.e.*, for a whole diocese, city, or community—except by virtue of special faculties from Rome. 3. The bishops of the United States have faculties from the Holy See *dispensandi super esu carnium, ovorum et lacticiniorum tempore jejuniorum et Quadragesimae;*[308] they may consequently, and in reality do, dispense, in their "Regulations for Lent," *universally—i.e.*, for the whole diocese.[309]

572. Are dispensations valid when conceded by a bishop without sufficient cause? A bishop can dispense validly, without just or sufficient cause, 1, from his own laws or those of his inferiors; 2, also from the laws of his superiors, when there is doubt either as to the existence *or* the sufficiency of a cause for dispensation;[310] 3, it is certain that if he knowingly dispenses from the laws of his superiors—*v.g.*, from impediments—without sufficient cause, the dispensation is *always invalid.*[311] It is, however, very probable that if a just cause really exists, the dispensation is valid, even though the bishop or chancellor, when giving it, thought there was no cause.[312] For the validity of dispensations depends not upon the knowledge, but the existence, of sufficient causes. Dispensations granted without sufficient reasons are *always unlawful;* and both the person asking for and the one granting such dispensations commit sin. Hence, the statutes of the various dioceses[313] in the United States usually prescribe that dispensations, especially from the publication of the banns and from the impediments of marriage, be asked in writing, and that canonical rea-

[307] Craiss., n. 973–980. [308] Fac., form. i., n. 27.

[309] Kenrick, Mor. Tr. IV., pars ii., n. 48. [310] Craiss., n. 968.

[311] Ib., n. 970.

[312] The following passage of Rohlings seems noteworthy: "Inveniuntur interdum, qui episcopis petitionem oretenus aut in scriptis offerunt, quin ullam prorsus dispensandi causam proponant. *Scire debent, dispensationem ita forte ab episcopo concessam omnino nullam esse*" (Medulla, p. 426).

[313] Cfr. Stat. Dioec. Nov., pp. 10, 51; cfr. Stat. Dioec. Albanensis, 1869, p. 15.

sons be assigned by the petitioner.[214] It would seem that, so far as the validity is concerned, dispensations may be asked for *orally*, since they may validly be granted *orally* by bishops.[215]

## Art. VIII.

### *On the Power of Bishops in regard to various matters relative to the Liturgy of the Church.*

573. We shall here only touch on several points. 1. It is an error to attribute to bishops legislative power respecting the liturgy of the Church, independently of the Roman Pontiff[216] 2. The bishop, if absent from his cathedral, may consecrate the *olea catechumenorum et infirmorum* in some other church.[217] He may also, in case of necessity, bless the holy oils with a less number of ministers than is prescribed by the Pontifical, and, in the United States, also *extra diem coenae Domini.*[218] We ask: Can the Blessed Sacrament be kept in public chapels without special permission from the Holy See? 1. As a rule, the Blessed Sacrament cannot be kept *outside of parochial churches*, except by permission from the Holy See.[219] 2. From this rule are excepted the churches or chapels of regulars, and of nuns having solemn vows and living in enclosure.[220] 3. By special indult from the Holy See, Sisters of Charity and other religious communities of women, though not solemnly professed, may keep the Blessed Sacrament in their chapels;[221] the key of the tabernacle should be kept by the priest.

574. Can bishops *de jure communi* permit the *temporary* celebration of Mass in private houses? We say, *temporary*

[214] Conc. Pl. Balt. II., n. 332, 333, 385, 386.
[215] Konings, n. 1628, q. 6.
[216] Cfr. Bouix, De Episc., vol. ii., p. 115.
[217] Craiss., n. 982.
[218] Facult., form. i., n. 12; ap. our Notes, p 464.
[219] Bouix, l. c., pp. 121, 122.
[220] Ib., p. 123.
[221] Kenrick, tr. xvii., n. 140; S. C. de P. F., 1 Aug. 1886.

*celebration;* for it is certain that they can no longer allow priests to celebrate *permanently* in private houses. We now answer: According to St. Liguori,[232] it is commonly held that they may still give such temporary permission. Bouix (l. c., p. 127) and Craisson (n. 3568), however, assert that this opinion has no solid basis. In fact, according to two recent decisions (one given in 1847, the other in 1856) of the Holy See, bishops, it would seem, cannot grant such temporary permission, except *si magnae et urgentes adsint causae*, and even then only *per modum actus transeuntis.*[233] What are the special powers of our bishops respecting the place of celebrating Mass? "Celebrandi sub dio et sub terra, in loco tamen decenti . . . si aliter celebrari non possit."[234] This power, which may, in fact is usually, communicated to priests,[235] was restricted by the Second Plenary Council of Baltimore;[236] so that, at present, "nulli sacerdoti liceat Missam celebrare in aedibus privatis, nisi in stationibus, et in iis aedibus quas ordinarius designaverit; aut dum actu missionis exercitiis, procul ab aliqua ecclesia, dat operam." Hence, priests cannot make use of the above faculty of celebrating *in quocunque loco decenti* in cities or places where there are churches.[237] Can our bishops, for grave cause—*v.g.*, when, on account of the cold in winter, it is difficult to say Mass in the church—allow priests to say Mass in their houses, even when the church is near by? Kenrick[238] seems to imply that they may do so.

575. Can a bishop exercise pontifical functions in the diocese of another bishop? 1. He cannot, save by the express permission of the ordinary of the place.[239] 2. Formerly missionary bishops, or those placed under the Propaganda (*v.g.*, the bishops of the United States), were forbidden to exercise pontifical functions in any other but their own diocese, *even*

[232] Lib. vi., n. 358; cfr. Conc. Trid., sess. xxii., Decr. de observ. et evit. in Celebr. Miss. [233] Konings, n. 1328. [234] Fac., form. i., n. 23; ap. our Notes, p. 467. [235] Konings, n. 1329, quaer. 3. [236] N. 362. [237] Kenrick, l. c. n. 87. [238] Ib. [239] Conc. Trid., sess. vi., cap. v., d. R.

*with the permission of the ordinary of the place.*[230] The rigor of this law was modified by Pope Pius VII.,[231] so that, at present, "quando rationabili causa, episcopi seu vicarii apostolici ad alienas dioeceses vel vicariatus se conferunt, possint sibi invicem communicare facultatem pontificalia exercendi."[232]

## ART. IX.

### *Of the Rights and Duties of Bishops in regard to the Sacrament of Confirmation.*

576.—I. *Minister of Confirmation.*—The bishop is the *minister ordinarius* of confirmation. According to the common opinion of theologians, it pertains to the essence of this sacrament, 1, that the *forehead* be anointed; 2, in the *form of a cross;* 3, by the *hand* of the bishop, not with any instrument.[233] The bishop is obliged, according to some, even *sub gravi*, to use the thumb of his right hand in anointing the forehead; yet confirmation, given with any finger, whether of the right or left hand, is valid—nay, licit—if the thumb of the right hand cannot be used.[234] A bishop administering confirmation in the diocese of another bishop, even though it be to his own subjects, without the permission of the ordinary of the place, incurs *suspensio a Pontificalibus ipso facto.*[235] He may, however, where it is customary —*v.g.*, in the United States[236]—confirm strangers in his own diocese.[237] By reason of universal custom, it is not at present obligatory, though advisable, that the confirmator and the person to be confirmed be fasting; for it has become customary to give confirmation even in the afternoon.[238] It seems forbidden, at least *sub levi*, to administer confirmation

[230] Decretum Innocentii X., 28 Mart., 1651.
[231] Aug. 8, 1819.
[232] Conc. Pl. Balt. II., n. 404.
[233] Craiss., n. 987.
[234] Kenrick, tr. xvi., n. 2.
[235] St. Liguori, lib. vi., n. 172.
[236] Kenrick, l. c., n. 6.
[237] Bouix, De Episc., vol. ii., pp. 212, 213.
[238] St. Liguori, l. c., n. 174.

*outside the church*, except for reasonable cause; it is certain, however, that a bishop may give this sacrament in his domestic chapel. In the cathedral, it is usually administered during the time of Pentecost; in the other churches of the diocese, during the episcopal visitation.[239] The bishop is entirely free to give it on non-festal days. We ask: What sin does a bishop commit by neglecting to administer confirmation? It is admitted by all that a bishop, except he is sick or too old,[240] commits a mortal sin by neglecting for a long time—*v.g.*, for eight or ten years—to traverse his diocese, or at least its principal parts, in order to give confirmation. It is no sin, however, for just reasons, to defer giving this sacrament for three years or more.[241] Does a bishop sin mortally by refusing to confirm persons at the point of death who ask for this sacrament? The question is disputed. It is probable that he does not sin even venially.[242]

577.—II. *The Subject of Confirmation.*—1. All baptized persons may validly receive this sacrament. 2. At present however, it is not allowed in the Latin Church to confirm children before the age of seven,[243] except (*a*) for grave reasons—*v.g.*, in danger of death;[244] (*b*) where it is customary, as in Spain. Insane persons may also be confirmed. The fathers of Baltimore[245] ordain that when confirmation is given to many persons, tickets (*schedulae confirmationis*),[246] on which are written the Christian and family names, should be given by the pastor to each person to be confirmed. This ticket will answer the double purpose of suggesting the Christian name to the bishop, and of recording it, together with the family name, in the register;[247] it will, moreover, serve as a testimonial that the bearer is sufficient-

[239] Phillips, Lehrb., p. 542. [240] Kenrick, l. c., n. 7.
[241] Bouix, l. c., p. 213. [242] Craiss., n. 991. [243] Walter, p. 538.
[244] Cfr. Conc. Pl. Balt. II., n. 252. [245] Ib. [246] Cfr. Craiss., n. 993.
[247] Cfr. Ceremonial for the United States, p. 486. Baltimore, 1865. Cfr our Notes, n. 227.

ly prepared to receive this sacrament. Formerly a linen or silken band, with a cross on it, was tied around the forehead of the person confirmed, and worn in this manner one, three, or seven days, according to custom.[248] At present the forehead is immediately wiped with cotton, no band being used. This is the custom also of this country.[249]

578.—III. *Sponsors or Godfathers and Godmothers* (*Patrini et Matrinae Confirmationis*).—1. According to St. Liguori[250] and others, the obligation of having a sponsor in confirmation binds *sub gravi.* When it is impossible, however, to procure sponsors, confirmation may be lawfully given without them. 2. Only one sponsor is allowed for each person. 3. The sponsor should be confirmed, 4, and be different from the one in baptism,[251] 5, and of the same sex with the person to be confirmed. 6. It is sufficient for the sponsor to place the right hand on the shoulder of the person to be confirmed, as is customary in the United States.[252] The fathers of Baltimore ordain: "Confirmati vero habebunt patrinos singuli singulos, nec tamen foeminis mares nec maribus foeminae patrini officium praestabunt. Quod si hoc fieri omnino nequeat, saltem duo pro pueris patrini, et duae pro puellis matrinae adhibeantur." [253]

## ART. X.

### *Rights and Duties of Bishops respecting Causes or Matters of Heresy.*

579. The proper judges in regard to the crime of heresy are: 1. The Supreme Pontiff, all over the world. 2. Bishops, in regard to all their subjects. 3. Those Papal delegates who are named inquisitors (*inquisitores fidei*).[254] Lay-

[248] St. Liguori, l. c., n. 188.
[251] Bouix, l. c., p. 215.
[253] Conc. Pl. Balt. II., n. 253.
[249] Kenrick, l. c., n. 12.
[252] Kenrick, l. c., n. 10.
[254] Bouix, l. c., p. 216.
[250] L. c., n. 185.

men are not competent judges in matters of heresy, even as to mere questions of fact.[255] In a diocese where there exists an inquisitor—*i.e.*, a judge deputed by the Holy See—the power to examine and punish heretics resides cumulatively in him, and, at the same time, in the bishop.[256] At present, however, the tribunal of the Sacred Inquisition (*Sanctum Officium*) exists, perhaps, nowhere else except in Rome[257] Hence, bishops, almost everywhere, exclusively possess all the authority which was ordinarily vested in inquisitors of the Holy See.[258] (Supra, n. 500.)

580. *Q.* Can bishops absolve from heresy?

*A.*—I. We premise: 1. Formal heresy, of which alone we here speak, is either *internal—i.e.*, not manifested externally by any word or action; or *external—i.e.*, outwardly expressed, in a sufficient manner,[259] by words or actions. 2. External heresy is subdivided into (*a*) *occult*—namely, that which is externally manifested, but known to no one, or only to a few—*v.g.*, five or six persons[260]—and which, moreover, is not yet brought before the judicial or external forum; (*b*) into *public or notorious*—that, namely, which is judicially established[261] (*haeresis notoria notorietate juris, haeresis notoria et ad forum judiciale deducta*) or known to nearly all persons, or at least to the greater portion of a town, neighborhood, parish, college, or monastery[262] (*haeresis notoria notorietate facti, haeresis notoria et ad forum judiciale non deducta*). 3. It is certain[263] that all persons who are formal heretics, and outwardly show their heresy by any grievously sinful act,[264] incur, *ipso facto*, major excommunica-

[255] Reiff., lib. v, tit. vii., n. 431. [256] Bouix, l. c., pp. 217, 218.

[257] Ib., De Judic., vol. ii., pp. 377, 378. Parisiis, 1866.

[258] Reiff., l. c., n. 448, 449. [259] Ib., n. 15. [260] St. Liguori, lib. vii., n. 76.

[261] Either because the guilty person was judicially convicted of heresy or confessed his heresy *in foro externo* (Bouix, De Ep., t. ii., p. 219).

[262] Bouix, De Episc., vol. ii., p. 219. [263] Reiff., l. c., n. 238–247.

[264] Avanzini, Com. in C. Apost. Sedis, p. 68. Romae, 1872.

tion, now reserved, *speciali modo.* to the Pope,[265] in the *Const. Apost. Sedis* of Pope Pius IX. II. We now answer: 1. No excommunication whatever attaches to purely mental heresy, neither is this sort of heresy reserved to the Roman Pontiff; hence, it is absolvable, not only by the bishop, but by any approved confessor.[266] 2. Bishops may, either personally or through others, grant absolution, both *in foro interno* and *in foro externo*, from heresy which is notorious *and* brought before their external forum.[267] We say, *either personally or through others;* for this power is ordinary, and therefore may be delegated to others.[268] Hence, Protestants who wish to abjure their heresy may be absolved by the bishop or his delegate, and it is not necessary to recur to Rome;[269] because, by the very fact that Protestants ask to be received into the Catholic Church, their heresy is brought before the *forum externum* of the bishop. 3. The Pope alone can absolve from heresy which is *notoria et non deducta ad forum judiciale.* 4. It is certain that bishops, at present, cannot absolve from occult heresy. The Council of Trent,[270] it is true, gave bishops power to absolve *pro foro conscientiae* from all occult crimes reserved to the Pope, and also from *occult heresy*.[271] But this power, so far as regards occult heresy, was subsequently revoked[272] by, and exclusively reserved to, the Holy See, both in the *Bulla Coena Domini*,[273] as published several times after the Council of Trent, and in the recent Constitution, *Apostolicae Sedis*, of Pius IX.[274]

[265] Phillips, Lehrb., p. 402. [266] Bouix, l. c., p. 220.
[267] Craiss., n. 1167–1170. [268] Reiff., l. c., n. 369. [269] Bouix, l. c., p. 222.
[270] Sess. xxiv., cap. vi., d. R. [271] Reiff., l. c., n. 350. [272] Bouix, l. c., p. 223 seq

[273] So named because annually published *in Die Coenae Dni.—i.e.*, on Holy Thursday (Salz., lib. iii., p. 44).

[274] According to the constitution *Apost. Sedis*, persons guilty of occult as well as of notorious heresy incur *excommunicatio latae sententiae speciali modo Pontifici Rom. reservata.* C. Ap. Sedis, n. i.; cfr. Craiss., n. 998: Avanzini, Com. in C. Ap. Sedis, pp. 14 and 68, 69.

581. *Q.* Can the bishops of the United States absolve from occult heresy?

*A.* They can, by virtue of apostolical indult. For our bishops have faculties from the Holy See, 1, *absolvendi ab haeresi . . . quoscunque.*[275] . . . 2. Again, they have power *absolvendi ab omnibus censuris in Const. Apostolicae Sedis* (d. 12, Oct., 1869) *Romano Pontifici etiam speciali modo, reservatis, excepta absolutione complicis in peccato turpi;*[276] hence, they can, as a rule, absolve from occult heresy. We say, *as a rule;* for, generally speaking, they cannot absolve, 1, those heretics[277] who have come from places where (*v.g.*, in Rome) inquisitorial tribunals are still in existence; 2, nor those who relapse into heresy after having judicially (*i.e.*, before an inquisitor, bishop, or his delegate) abjured it.[278] Our bishops, therefore, can, either personally or through worthy priests of their dioceses, absolve *pro utroque foro* from *every kind of heresy*, whether notorious or occult,[279] except in the two cases just given.

## Art. XI.

### *On the Power of Bishops to Reserve Cases.*

582.—I. Although bishops may undoubtedly reserve cases to themselves,[280] it is fitting that they should do so rather *in* than *out* of synod, chiefly because reservations

[275] Facult., form. i., n. 15. [276] Ib., n. 16.

[277] However, if these heretics have become guilty of heresy in missionary countries where *haereses impune grassantur*, they may be absolved by our bishops or their delegates (Facult., l. c., n. 15).

[278] But if these heretics are born in places *ubi impune grassantur haereses*, and, after having judicially abjured, relapse, upon returning to these places they may be absolved by our bishops or by priests authorized by them, but only *in foro conscientiae* (Facult., l. c.)

[279] Cfr. Reiff., l. c., n. 369, 370; et lib. iv., App., facult. i., x., vol. v., pp. 547 '48. [280] Bouix, De Episc., vol. ii., p. 242

made in synod are, according to all, perpetual,[281] while those made out of synod are considered by many as temporary. Cases reserved to bishops are of two kinds.[282] Some are reserved *by* bishops (named *a nobis—i.e., casus reservati a nobis*), whether in or out of synod; others *to* bishops (*nobis—i.e., casus reservati nobis*), but not *by* them: *v.g.*, all those cases which, though reserved to the Pope, are, nevertheless—*v.g.*, because they are occult—absolvable by bishops; also the three cases reserved to ordinaries in the *C. Ap. Sedis*. II. The *S. Congr. Episc.*[283] has repeatedly admonished bishops to reserve, 1, but few cases; 2, only the more atrocious and more heinous crimes; 3, it has forbidden them to reserve sins or cases already reserved to the Sovereign Pontiff, so as to avoid superfluous reservations.[284] What particular cases or crimes it may be expedient for a bishop to reserve in his diocese cannot be determined by any fixed rule, but must depend upon circumstances. III. Bishops generally reserve certain grievous sins which are more frequently committed in their respective dioceses. Bouix, l. c., thinks that in France bishops should not, as a rule, reserve more than two, or at most three, cases. *Our bishops* do not, generally speaking, go beyond this number.

☞ The *Third Plenary Council of Baltimore* (n. 127) makes the following reservation for the whole United States: 1. "Decernimus catholicos, qui *coram ministro cujuscunque sectae acatholicae* matrimonium contraxerint vel attentaverint, *extra propriam dioecesim*, in quolibet statu vel territorio sub ditione praesulum qui huic concilio adsunt vel adesse debent, excommunicationem incurrere episcopo reservatam, a qua tamen quilibet dictorum ordinariorum sive per se sive per sacerdotem ad hoc delegatum absolvere poterit. 2. Quod si *in propria dioecesi* ita deliquerint, statuimus eos ipso facto innodatos esse excommunicatione, quae nisi absque fraude legis alium episcopum adeant, eorum ordinario reservatur."

281 Bened. XIV., De Syn., lib. v., cap. iv., n. 3.

282 Salz., lib. iii., p. 45.

283 Jan. 9, 1601, and Nov. 26, 1602.

284 Bouix, l. c., p. 243.

IV. When the Pope gives any one power to absolve from pontifical reservations, he does not thereby confer power to absolve from cases reserved *by* bishops.[290] Hence, not even regulars can absolve from diocesan or episcopal reservations.[291] If a penitent, who has committed a sin reserved by his bishop, confesses in another diocese, where the sin is not reserved, he may there be absolved by any simple confessor, provided he did not go chiefly *in fraudem legis.*[292] When a case is reserved in a provincial council, the power to absolve from it is not taken from the several bishops of the province.[293]

### Art. XII.

*Of the Power of Bishops relative to Ecclesiastics.*

583. Ecclesiastics are either diocesan or extraneous.

§ 1. *Power of Bishops over the Diocesan Clergy.*

584.—I. According to the ancient discipline of the Church,[294] no person was promoted to any *ordo,* whether major or minor, without being, at the same time, attached to some church or pious place, where, even prior to being ordained a priest,[295] he exercised permanently the duties of whatever order he had received. Nor was he allowed to depart from the church for which he was ordained without the permission of the bishop.[296] This discipline had become obsolete many centuries before the Council of Trent.[297] Clerics were promoted even to the priesthood *ad titulum patrimonii* or *pensionis—i.e., absolutè*—and without being assigned to any church or receiving any ecclesiastical appointment.[298] Ecclesiastics thus ordained were at liberty either to leave their dioceses entirely or live out of them. Hence, many clerics were continually roving from place to place,

[290] Kenrick, tr. xviii., n. 159, 176.
[291] Phillips, Lehrb., pp. 563, 564
[292] Bouix, l. c., p. 243.
[293] Ib., p. 244.
[294] Phillips, Kirchenr., vol. i., p. 608.
[295] Ib., p. 610.
[296] Ib., pp. 612–617, 620.
[297] Bouix, l. c., p. 269.
[298] Phillips, l. c., pp. 608, 611.

and were in consequence scarcely amenable to any bishop. II. To remedy this state of things the Council of Trent[299] restored the above ancient discipline, so far as major or sacred orders are concerned, ordaining that no one should be promoted to sacred orders[300] without being attached to some determinate church, and that a person thus attached should not quit his place without permission from the bishop. This Tridentine law, however, seems at present to have almost universally fallen into desuetude.[301] It is not observed in the United States. In fact, it were impracticable, as things are at present, to attach seminarians, when ordained subdeacons or deacons, to any particular church, that they might act as such; for they remain most of the time, before their ordination to the priesthood, in the seminary, and could therefore be of little use to pastors.[302] Moreover, from certain declarations of the *S. Congr. Conc.*, it may be inferred that the Tridentine law on this head no longer obtains strictly.[303] Benedict XIV.,[304] however, holds the contrary.

585. *Q.* Can ecclesiastics leave their dioceses without the permission of the bishop?

*A.* We premise: A distinction must be drawn between ecclesiastics who are attached to some special church, in the Tridentine sense, or have a benefice requiring personal residence, and those who are not so attached or have no such benefice. We now answer: 1. It is certain that ecclesiastics of the first class cannot abandon their church or give up their benefice—*v.g.*, parish, canonship—and go to another diocese without permission from the bishop.[305] This is evident from the Council of Trent,[306] and also inferable from the promise of obedience given in ordination. We say, *without permission from the bishop;* for, although the fathers

[299] Sess. xxiii., cap. xvi., d. R.
[300] Phillips, l. c., pp. 619, 620.
[301] Bouix, l c., p. 172.
[302] Craiss., n. 1003, 1004.
[303] Ib., n. 1005.
[304] De Syn., lib. xi., cap. ii., n. 13.
[305] Bouix, l. c., pp. 270–274.
[306] Sess. xxiii., cap. xvi., d. R.

of Trent merely say "without consulting the bishop" (*inconsulto episcopo*), this phrase is commonly explained by canonists as meaning, "without the permission of the bishop" (*invito episcopo*).[307] 2. As to the second class of ecclesiastics, the question is controverted. The *affirmative*—namely, that they can leave, etc.—is the *sententia communior* of canonists. This was also, until of late, the view of the *S. Congr. Concilii.* We say, *until of late;* for the more recent declarations of this congregation seem to favor the *negative*.[308] Hence, as Craisson infers, these ecclesiastics cannot, at present, withdraw entirely from their dioceses except by permission of the bishop. The reason seems to be that these ecclesiastics, though not ordained for any *particular church*, are ordained, at least, for the *service of the diocese*.[309]

☞ 586. Can priests in the United States entirely withdraw from their dioceses without the permission of the bishop? They cannot. For the Second Plenary Council of Baltimore (109) declares that all priests in this country who are either *ordained* for a diocese or properly *admitted* into it are obliged to remain in the same diocese until they are canonically dismissed from it.[310] Nay, those priests, with us, who are ordained *ad titulum missionis*, and who, consequently, before being ordained, must swear that they will remain perpetually in the diocese for which they are ordained, cannot leave these dioceses, even with the permission of their bishop. For, at present, according to the Instruction of the S. C. de P. F. *de Titulo Ordinationis*, dated April 27, 1871, they can be released from their missionary oath binding them to their diocese only by the Holy See, and not by the bishop. Hence the bishop cannot give such a priest an *exeat* except after the release or dispensation from the oath has been granted by Rome. However, by special indult of the S. C. de P. F., dated Nov. 30, 1885, granted at

[307] Bouix, l. c., p. 270. [308] Ib., pp. 277. 278. [309] Craiss., n. 1008.
[310] Conc. Pl. Balt. II., n. 109.

the request of the *Third Plenary Council of Baltimore*, our bishops may now give *exeats* without the above papal dispensation to priests ordained *ad titulum missionis*, who wish to pass from one diocese to another of *the same province*, as we shall explain a little later on.

587. *Letters Dimissory, Testimonial, and Commendatory.*—1. *Letters dimissory* (*litterae dimissoriae, reverendae, licentiales*) are those given by a bishop to his subjects in order that they may be ordained by another bishop; or also those by which ecclesiastics are freed from the jurisdiction of their bishop. In the latter sense, however, letters dimissory are with us called *exeats* (*litterae excorporationis*, formerly *litterae formatae*). Priests cannot be forced to take their *exeat;* in fact, bishops should not give *exeats*, except at the request of clergymen wishing to leave the diocese. Moreover, no priest, even in the United States, should receive his *exeat* unless it be certain that he will be received by another bishop. At present, a priest in the United States is received into another diocese in two ways, namely, formally and presumptively. As to the manner in which both the *formal* and the *presumptive* admission take place, see the *Third Plenary Council of Baltimore*, n. 62–69; Ib., p. civ. 2. *Letters testimonial* (*litterae testimoniales*) testify to the orders received and to the absence of any canonical impediment prohibiting a priest from saying Mass. 3. *Letters commendatory* (*litterae commendatitiae*) bear witness, moreover, to the morals and learning of ecclesiastics, and are given to them when about to travel. The S. C. de Prop. Fide, by letters of its cardinal prefect, dated April 20, 1873, commands bishops, vicars, and prefects-apostolic of missionary countries, not to receive any strange ecclesiastics and priests into their dioceses, or allow them to say Mass, unless they bring with them commendatory letters from their bishops.

§ 2. *Rights of Bishops in regard to extraneous Ecclesiastics.*

588. A bishop not only *can*, but *should*, forbid priests who are strangers and have no letters commendatory from

their ordinaries, from being allowed to say Mass in his diocese.[320] He may, moreover, if he chooses, ordain that strange priests should show their letters either to himself or his vicar-general, and that they be prohibited from saying Mass without a written permission from himself or his vicar-general.[321] We say, *he may*, not *he should;* for he can allow them to say Mass, provided they exhibit their letters commendatory to the rector of the church where they wish to celebrate. The bishop may also command exempt regulars not to permit strangers, whether they be secular priests or regulars of a different order, to say Mass, even in their exempt churches, without permission from him or his vicar-general. We say, *regulars of a different order;* for regulars of the same order can say Mass in the houses of their order everywhere without having permission from the bishop.[322] A priest who is a stranger, even though he has no letters commendatory—*v.g.*, if he has lost them on his journey—can and should be permitted by the bishop to say Mass, provided he can sufficiently prove by witnesses, or in some other way, that he is a worthy priest;[323] nay, he may, even if unable to show his good standing, and if, in consequence, not allowed to say Mass, celebrate privately, provided it can be done without scandal.[324] The obligation incumbent on bishops—not to allow Mass to be said by outside priests who are unprovided with letters commendatory from their ordinaries[325]—is to be understood of extraneous clergymen who are unknown, but not of those who are either well known or at least known to one or several trustworthy persons in the diocese.[326] Thus, in the United States, and almost everywhere, priests coming from neighboring dio-

[320] Conc. Trid., sess. xxiii., cap. xvi., d. R.; and sess. xxii., Decr. de observ. et evit. in Celebr. Missae.
[321] Bouix, l. c., pp. 292, 293.
[322] Ib.; cfr. Craiss., n. 1015.
[323] Bouix, l. c., p. 294.
[324] Ib.
[325] Ib., p. 295; cfr. ib., De Jure Regular., vol. ii., pp. 188, 189
[326] Cfr. Craiss., n. 1012 1016.

ceses are allowed, at least for the first eight or ten days, to say Mass without having or showing any letters commendatory. A bishop cannot forbid outside priests to say Mass solely because they are strangers.[327] Nay, extraneous priests, even though unprovided with letters commendatory, cannot, without just cause, be compelled by the bishop to leave the diocese, if they do not wish to celebrate, but merely to reside there.[328]

589. *Q.* What are the rights of bishops in the United States as regards extraneous clergymen?

*A.* We premise: These clergymen are of two kinds: 1. Some travel or make short trips out of their dioceses for the sake of recreation, the good of their health, or to make collections. 2. Others leave their dioceses in order to seek admission into other dioceses. We now answer: I. The first class falls under the above rules in regard to saying Mass. Priests, with us, are forbidden, under pain of *suspensio ferendae sententiae*,[329] from making collections in a strange diocese without the permission of the ordinary of the place.

II. As to the second class, bishops are exhorted not to give them permission to say Mass, or administer the sacraments, and, *à fortiori*, not to receive them into their dioceses, 1, if they have no letters commendatory from the ordinary to whom they last belonged; 2, if they have neglected to select another ordinary within six months.[330] Extraneous priests coming from Europe should not be admitted into a diocese *nisi litteris suorum episcoporum prius missis, consensum episcopi in cujus dioecesim transire desiderant, obtinuerint*.[331]

☞ III. At present, according to the *Third Plenary Council of Baltimore*, secular priests applying for admission into a diocese cannot, as a rule, be forthwith adopted per-

[327] Bouix, De Episc., l. c., p. 297. [328] Ib., p. 300.
[329] Conc. Pl. Balt. II., n. 119. [330] Ib., n. 110. [331] Ib., n. 121.

manently, but must be first received *on probation* for a term of *three* or *five years*. We say, *as a rule:* for, by the consent of the bishop receiving, and of the bishop dismissing, and of the priest to be received, this probatory term can be omitted.[332]

IV. Besides, when there is question of a priest ordained for or received into a diocese *ad titulum missionis*, the bishop who is about to receive him should, six months before adopting him absolutely, write to the S. C. de Prop. Fide for a dispensation from the missionary oath. For, all priests who are ordained *ad titulum missionis* must take the oath to remain perpetually in the diocese or vicariate for which they are ordained. This oath binds so strictly that the Holy See alone can grant a release from it. When the bishop has obtained this release or dispensation, he must administer the missionary oath anew to the priest whom he is about to admit into his diocese. (Conc. Pl. Balt. III., n. 64.)[a]

V. What has just been said respecting the dispensation from and renewal of the missionary oath does not, at present, apply to priests ordained "ad titulum missionis" who wish to pass from one diocese into another *within the same ecclesiastical province*. For, by special indult of the Holy See, dated Nov. 30, 1885, the missionary oath taken by priests ordained *ad titulum missionis*, binds, in future, or holds good for the *entire province*, and not merely, as was the case formerly, for the single diocese for which it was taken. Consequently, priests ordained *ad titulum* can now, with the

[332] Conc. Pl. Balt. III., n. 63; Instr. S. C. de P. F. 1871, n. 11, 12; cf. De Angelis, l. i., t. xxii., n. 4.

[a] The S. C. de P. F., *Ad Dubia circa ordinatos Tit. Miss.*, decided, on Feb. 4, 1873: Q. 4. Utrum explicatius declarandum sit, sacerdotem a dioecesi cui juramento ligatur ad aliam transeuntem debere in hac altera novum juramentum emittere; neque hoc facere posse absque venia S. Congregationis.

Q. 5. Utrum necessario requiratur venia S. Congregationis ut ordinatus titulo missionis *quin praestiterit juramentum*, possit a dioecesi pro qua ordinatus fuit, ad aliam transire. The S. C. de P. F. replied: *Ad* 4^m^ *affirmative ad utrumque. Ad* 5^m^ *affirmative*. (See Conc. Pl. Balt. III., pp. 210, 211.)

consent of the bishop dismissing and of the bishop receiving them, pass from one diocese into another, within the same province, without obtaining any papal dispensation releasing them from their former oath, and without taking the oath anew for the diocese into which they are to be received. (See Conc. Pl. Balt. III., p. civ.)

VI. As to the admission of priests who leave religious communities having solemn or only simple vows, the *Third Plenary Council of Baltimore*, n. 65, enacts: "Quod vero pertinet ad sacerdotes religiosos, qui vota solemnia nuncuparunt, atque ex apostolica indulgentia in saeculo vivere permittuntur; vel qui ediderunt vota simplicia et a suis congregationibus egressi sunt, si ad episcopum accedant petuntque in ejus dioecesim adscribi, primo quidem tantum ad missae celebrationem, dummodo literas saecularizationis ac commendantias Ordinarii loci a quo discesserunt exhibeant, admitti possunt, *nondum vero ad triennale experimentum* in ministerio pastorali. Volumus enim, ut ad hanc probationem subeundam non admittantur, antequam episcopus, exquisitis ab ordinis vel Instituti superioribus et episcopo commendante *secretis informationibus*, iisque ad S. Congregationem remissis, *hujus veniam sciscitatus sit;* qua obtenta, peractoque experimento, ii qui *non ad tempus*, sed *in perpetuum* S. Congregationis Episcoporum et Regularium rescripto saecularizati sunt, clero dioecesano incardinari possunt, dummodo prius de titulo canonico sibi providerint. Quod si assumunt titulum missionis, simul juramentum dioecesi perpetuo inserviendi praestare tenentur (Instr. S. C. de P. F., 17 Apr. 1871, n. 12)."

VII. Finally, the *Third Plenary Council of Baltimore* (n. 67) decrees that no bishop shall give an *exeat* to any of his priests unless it is certain that such priest will be received into another diocese; that where a priest has received his *exeat* before he has been received into another diocese, such *exeat* shall not take effect, and such priest shall not be considered as dismissed from the diocese, until he has been either formally

or presumptively received into another diocese, and until (when there is question of the formal admission) his bishop has been authentically notified of the admission.

## Art. XIII.

### *Of the Powers of Bishops concerning Indulgences.*

590. *Q.* What are the indulgences which bishops can at present grant by virtue of the *jus commune?*

*A.*—1. An indulgence of one year,[333] in the consecration, not mere blessing,[334] of a church; 2, of forty days only in other cases. We observe: 1. These indulgences may be granted also by bishops-elect; because the giving of an indulgence is an act of jurisdiction, not of order.[335] 2. They can be granted for the living only, not for the dead. 3. Bishops can grant them only to their subjects; an indulgence, however, attached by the bishop to some pious place —*v.g.*, to the visiting of and praying in some church or chapel[336] (*indulgentia localis*)—may be gained by strangers who comply with the conditions prescribed.[337] 4. Archbishops can grant them, not only in their own dioceses, but in all the dioceses of their provinces, and that even out of the visitation.[338] 5. Bishops may delegate the power of granting them not only to priests, but also to inferior ecclesiastics. 6. Neither coadjutor nor titular (*i.e.*, *in partibus*) bishops nor vicars-general have power to concede indulgences, unless they are specially empowered to do so by the ordinaries of places. Neither can vicars-capitular, *sede vacante*, grant indulgences.[339]

591. *Q.* What indulgences can the bishops of the United States grant by virtue of the *jus speciale* or *particulare*—*i.e.*, by virtue of the faculties given them by the Holy See? In

[333] Ferraris, V. Indulgentia, art. i., n. 5; cfr. Konings, n. 1778.

[334] Our Notes, n. 251.

[335] Bouix, l. c., pp. 301, 302.

[336] Ferraris, l. c., n. 18.

[337] Bouvier, Inst. Theol., vol. iii., p. 526.

[338] Cfr. Phillips, Lehrb., p. 571.

[339] Ib.

other words: What special indulgences are grantable by our bishops?

*A*. A plenary indulgence, 1, to all the faithful of their dioceses three times a year;[340] 2, to all persons when first converted from heresy;[341] 3, to each of the faithful, *in articulo mortis;* 4, in the Forty Hours' Devotion;[342] 5, our bishops may also impart, four times a year, the Papal benediction, with a plenary indulgence, to be gained by those present.[343] They can also declare an altar privileged in every church of their dioceses;[344] bless rosaries, crucifixes, sacred images,[345] erect certain confraternities, the Way of the Cross, with all the customary Papal indulgences, etc.[346] *Publication of Indulgences granted by the Pope.*—To guard against imposition and prevent abuses in this matter, Papal indulgences can, as a rule, be published in a diocese only with the permission of the bishop.[347] Hence, Pontifical briefs granting new indulgences, even though it be to churches of regulars,[348] are to be submitted to the bishop before being published.[349] However, as Konings, n. 1778, says, indulgences conceded by the Pope to the entire Church in rescripts already published and quoted by approved authors—*v.g.*, by Ferraris—or contained in the *Raccolta*, or Prinzivalli's Collection, do not require the episcopal promulgation.

## Art. XIV.

### *Rights and Duties of Bishops in regard to Relics.*

592. By the relics of saints (*reliquiae sanctorum*) are understood not only their bodies, in whole or in part, but also their garments, instruments of penance, and the like.[350] Relics which are *newly discovered*, or *produced for the first*

[340] Facult., form. i., n. 14. [341] Ib., n. 17.
[342] Ib., n. 18; cfr. ib., n. 19, 20. [343] Facult. Extraord. C., n. 7.
[344] Ib., n. 8. [345] Ib., n. 9. [346] Ib., n. 10, ap. our Notes, pp. 463, 470 seq
[347] Phillips, l. c., p. 572; cfr. Conc. Trid., sess. xxi., cap. ix, 1. R.
[348] Supra, n. 112; cfr. Craiss., n. 1022. [349] Ferraris, l. c, art. iv., n. 31.
[350] Ferraris, V. Veneratio Sanctorum. n. 52; cfr. Reiff, lib. iii., tit. xiv., n. 24.

*time* cannot be exposed for public veneration (*cultus publicus*) until they have been properly authenticated and approved.[351] *Old relics*, however, even though their authentications are lost, should be held in the same veneration as before.[352] I. *Authentication of Relics.*—By whom are relics to be examined and approved before being exposed for public veneration? We premise: We here speak of newly-discovered or newly-produced relics. We now answer: 1. The relics of those who are *already canonized or beatified* may be authenticated and approved in order to public veneration, not only by the Roman Pontiff, but also by bishops; nay, these relics, even though already approved by the Pope, should, nevertheless, be again examined by bishops before being exposed in dioceses, for the purpose of ascertaining whether they were in reality authenticated in Rome.[353] Relics, therefore, cannot be exposed in a diocese for public veneration, even in the churches of regulars,[354] without the permission of the bishop.[355] Should, however, any grave question arise touching these matters, the bishop should not proceed without having first consulted the Pope.[356] 2. The relics of persons deceased in the odor of sanctity, *but not yet beatified*, can be approved, for public veneration, by the Pope only, not by bishops.[357] At present, however, these relics are not thus approved by the Pope; for this approbation would be equivalent to beatification, which now precedes the public veneration of relics. It is allowed, however, to honor privately (*cultus privatus*) all relics, new as well as old, not only of those who are canonized or beatified, but also of those who died in the odor of sanctity, even when such relics have not been approved by any one.[358] II. *Transfer of Relics* (*translationes reliquiarum*).—Can bishops transfer the bodies or really

[351] Conc. Trid., sess. xxv., De Invocat., etc; cfr. Reiff., l. c., n. 20.
[352] Ferraris, l. c., n. 61.
[353] Reiff., l. c., n. 27.
[354] Ferraris, l. c., n. 55, 56.
[355] Phillips, l. c, pp. 724, 725.
[356] Conc. Trid., l c., in fine.
[357] Reiff., l. c., n. 28.
[358] Ib., n. 29, 30

principal relics (*reliquiae insignes*) of saints from one church to another without the permission of the Holy See? There are two opinions. The negative—namely, that they cannot, etc. —held by Benedict XIV.[359] and others, seems at present the more probable opinion. Relics cannot be sold.[360]

## Art. XV.

*Rights and Duties of Bishops respecting*, 1, *Stipends of Masses; 2, the Reduction of the Number of Founded Masses;* 3, *other Pious Legacies.*

593.—I. *Stipends of Masses.*—1. It is certain that the bishop has a right to determine what sum of money shall constitute a just honorary for Masses or *intentions;* and even regulars are bound to abide by the rule laid down by him.[361] It is commonly held by canonists that the alms, as fixed by the bishop or custom, is to be considered a just stipend;[362] it need not, however, constitute the support of a priest for a whole day.[363] In the United States the honorary is generally one dollar ($1).[364] 2. It is certain that priests cannot *demand,* though they may *accept* if spontaneously offered, a stipend larger than that fixed by custom or episcopal enactment.[365] 3. According to the more probable opinion, the bishop can ordain that priests shall not accept less than the honorary established by custom or law. In the United States priests should not, as a rule, accept less than the amount fixed by the bishop.[366]

594. What is to be said of churches—*v.g.*, cathedrals or larger parishes—where a great number of stipends is received? 1. It is not allowed,[367] except with the consent of those giving

[359] De Beatif. et Canoniz., lib. iv., part. ii., cap. xxii., n. 11-20.
[360] Reiff., l. c., n. 31. [361] Bouix, l. c., pp. 302, 303. [362] Craiss., n. 1039.
[363] Phillips, l. c., p. 551; cfr. Conc. Pl. Balt. II., n. 369, note 2.
[364] Our Notes, n. 331. [365] Conc. Pl. Balt. II., n. 369. [366] Ib.
[367] Craiss., n. 1042.

the stipends, to accept these honoraries in such quantities as to render it impossible to celebrate all the corresponding Masses in due time.[368] In the United States, as elsewhere, it is customary to send intentions, when too numerously received, to other priests less favored. Care, however, must be taken that the Masses are said in due time. A delay exceeding three months is, generally speaking, a mortal sin; nay, as regards Masses for recently-deceased persons, a delay of one month constitutes, according to many, a mortal sin.[369] 2. Bishops should see that rectors of these churches do not retain for themselves, or even for their churches, any portion, however insignificant, of the stipends; only, in case[370] they are too poor to bear the necessary expense attendant on the celebration of the Masses,[371] it is allowed to keep merely as much as will cover these outlays.

595.—II. *Foundations for Masses.*—Mere stipends (*eleemosynae missarum, eleemosynae manuales, honoraria, stipendia*[372]) differ from foundations for Masses (*fundationes Missarum, Missae fundatae*); the latter[373] are endowments made to ensure the *permanent* celebration of Masses;[374] the former are given for the celebration of Masses in this or that case only. We observe: 1. Secular priests, even in the United States,[375] cannot accept foundations of Masses without the written permission of the bishop.[376] 2. Regulars must have the consent of their superiors-general or provincials. We ask: Can bishops at the present day reduce the number of founded[377]

[368] Bouix, De Capitulis, p. 273. [369] Konings, n. 1324, q. 2, 3.

[370] Bouix, l. c., pp. 273, 274.

[371] These expenses—*v.g.*, for altar wine, candles—are defrayed, with us, from the income of the church. [372] Phillips, l. c., p. 549. [373] Ib., p. 552.

[374] *I.e.*, either for a given number of years or perpetually (Conc. Pl. Balt II., n. 370). [375] Conc. Pl. Balt. II., n. 370.

[376] Bouix, De Episc., vol. ii., p. 304.

[377] We say, *founded Masses;* because no reduction can take place in regard to ordinary intentions or *Missae manuales* (Bened. XIV, De Syn., lib. xiii., cap. ult., n. 29).

Masses? They cannot, except with the permission of the Holy See.[378] The Council of Trent, it is true, gave bishops the power to do so in certain cases. But this power, except where the instrument of foundation itself authorizes the bishop to make a reduction, was reserved *exclusively* to the Holy See by Pope Urban VIII.[379] The reasons for which the Holy See, if applied to, usually grants a reduction of the number of Masses to be said (*reductio Missarum*), are, for instance,[380] 1, the scarcity of priests, making it impossible to say the Masses; 2, depreciation of the funds or capital; 3, total loss of the fund. If, however, the fund is lost without any fault on the part of the ecclesiastical authorities, the obligation to celebrate lapses *ipso facto*.[381] We observe here, bishops not unfrequently receive faculties (*v.g.*, for five or ten years, or longer) from the Holy See to reduce the number of Masses where it is necessary to do so.

596. What does the *Second Pl. Council of Baltimore* counsel in regard to foundations of Masses, whether perpetual or temporary, in the U. S.? 1. No general rule as to the requisite amount of the fund can be laid down for the whole country: each ordinary is free to fix the sum for his diocese.[382] 2. Nevertheless, the fathers seem to recommend that, especially as regards perpetual Masses, the fourth decree of the Second Provincial Council of Cincinnati be followed—to wit: That the fund or endowment for an annual Low Mass be at least $50; for a High Mass (*Missa Cantata*), $100.[383] 3. Great circumspection should be used in accepting foundations, especially of perpetual Masses.[384] It were advisable, therefore, to accept foundations only on the following conditions: 1. That the obligation to celebrate shall cease if the fund,

[378] This holds true also of bishops in the United States. (Cfr. Conc. Pl. Balt. II., p. 319).

[379] Bened. XIV., l. c., n. 19, 20; cfr. Const. *Cum Saepe* of Urban VIII., Jan. 21, 1625. [380] Bouix, l. c., p. 304. [381] Phillips, l. c., p. 554. [382] Conc. Pl Balt. II., n. 370. [383] Ib., Append., p. 319. [384] Ib., n. 370.

no matter from what cause, be either entirely lost or yield no income; 2, that the ordinary shall have power to reduce the number of Masses if the interest on the capital, no matter for what reasons, becomes insufficient to make up the stipend fixed by the founder; 3, that if, for whatever cause, the church in which the Masses are to be said is destroyed or deprived of a priest, the Masses can be said in any church to be designated by the ordinary.[385]

597. What is decreed by the Second Plenary Council of Baltimore concerning the record to be kept of Masses, whether ordinary or founded? 1. In all churches, regular as well as secular, there should be a tablet or plate (*catalogus, tabella onerum*), on which should be inscribed all founded Masses, whether temporary or perpetual.[386] 2. In every sacristy there should be two registers: one in which a record is to be kept of all founded Masses; another where the ordinary intentions are to be noted down. The fulfilment of the obligation—*i.e.*, the celebration of the Masses—should also be carefully recorded in these books respectively.[387] Bishops not only *can*, but *should*, enforce those regulations, especially in churches where a large number of Masses are celebrated.[388]

598.—III. *Devises and Legacies for Pious or Charitable Uses* (*testamenta ad causas pias, legata pia*).—By *testamenta ad causas pias* are understood those last wills in which the testator leaves[389] his (*real*) estate, 1, to a church; 2, or to a charitable institution—*v.g.*, to an asylum, hospital, protectory;[390] or, 3, to some religious or charitable society.[391] *Legata pia* or *ad pias causas* are legacies (*i.e.*, *personal* property given by wills) left for religious or charitable uses.[392] We now ask: Can bishops,

[385] Konings, n. 1325, qu. 18. [386] Conc. Pl. Balt. II., n. 371. [387] Ib.
[388] Bouix, De Capitulis, p. 274. Paris, 1862.
[389] Of course, for religious or charitable purposes.
[390] Cfr Soglia, vol. ii., p. 264. [391] Ib., p. 263.
[392] Ib., p. 265; cfr. Konings, n. 915.

even for just reasons, alter these last wills or legacies? In other words, can they use the money or real estate thus devised for other purposes than those specified in the will? The question is controverted. According to St. Liguori,[303] the negative—namely, that they cannot—is the *sententia probabilior*. The Pope alone can, for just cause, change these wills. However, the following is certain: 1. Where, by reason of custom (*v.g.*, in France), bishops alter such wills without the permission of the Holy See, it is safe to abide by the decision of the bishop.[304] 2. Bishops are, according to canon law, executors of all pious dispositions (*legata pia, dispositiones piae*), whether made by last will or between the living; they should consequently see to the exact performance of what is enjoined in these legacies. This holds true even though the testator expressly excludes the bishop from the executorship.[305] 3. The testator may, however, appoint any other suitable executor; in this case the bishop cannot directly interfere; but, if the executor neglects to carry out the provisions of the will, the execution devolves on the bishop; this holds also of bequests *inter vivos*.[306] We observe: Property in the United States cannot be legally devised to a corporation (*v.g.*, to a church, when incorporated), unless such corporation is authorized by its charter to receive bequests by will.[307] We say, *legally*; for devises for religious and charitable uses are valid and binding, in *foro conscientiae*, even though null according to law.

[303] Lib. iv., n. 931, qu. 2.
[304] Craiss., n. 1048
[305] Ferraris, V. Episcopus, art. vi., n. 171, 172.
[306] Ferraris, l. c., n. 172
[307] Wells, p. 94; cfr. Kent, vol. iv., n. 507.

## ART. XVI.

### *Rights and Duties of Bishops concerning the Taxes of the Episcopal Chancery.*

599. By authority of Pope Innocent XI., a decree,[398] written in Italian, was issued in 1678,[399] fixing the emoluments that can be asked or received for the various acts, instruments, or writings of the episcopal chancery.[400] The object of this decree, usually named *Taxa Innocentiana*, was to introduce, as far as possible, a uniform rate of taxation into all episcopal chanceries throughout the world.[401]

600. *Q.* What are the chief regulations contained in the decree of Innocent XI.?

*A.*—I. Neither bishops nor their vicars-general or other officials can ask or receive anything,[402] even though it be voluntarily offered, 1, for the conferring of orders or for other acts pertaining to ordination—*v.g.*, for permission to receive orders from some other bishop; 2, for appointments (*collatio*) to benefices or parishes; 3, for dispensations from impediments of marriage or from the publication of the banns and the like.[403] Though bishops, in granting matrimonial dispensations, cannot accept any honorary, they are, as a rule, allowed to receive a suitable alms, to be applied for charitable uses.[404] We say, *alms;* now, "eleemosynae nomine intelligi non potest *fixa quaedam summa* a quovis eroganda, sed ea, quam quisque, ratione habita suarum facultatum, commode dare potest." [405] Hence, they cannot establish or demand a *fixed tax or sum of money* for dispensa-

[398] Ferraris, V. Taxa. [399] Phillips, Lehrb., p. 290.
[400] Bouix, De Episc., vol. ii., pp. 307, 308. [401] Ferraris, l. c., n. 1, 2.
[402] Except the candle offered by the person ordained, according to the Pontifical. [403] Ferraris, l. c., vol. viii., col. ii., p. 216. [404] Craiss., n. 1057.
[405] Conc. Pl. Balt. II., n. 386, note 1; cfr our Notes, n. 353.

tions;[406] they may, however, suggest the amount of alms, to vary according to the means of the petitioners. In this sense, it seems to us, the taxes for dispensations, as established in the United States, must be understood. II. However, the chancellor of the bishop may receive a moderate fee for his labor in drawing up the requisite papers in the above cases.[407] Thus, according to the *Taxa Innocentiana*, he may receive for letters dimissory, testimonial, and the like, a Roman *giulio* (10 cents); for letters of appointment to benefices or parishes, a Roman *scudo* ($1 in gold); for writing dispensations, three Roman *giulios* (30 cents). As a rule, the chancellor's fee for each instrument should not exceed, at the highest calculation, a Roman *scudo* ($1). But he cannot receive any fee for letters giving permission to say Mass, administer the sacraments, preach, and the like.[408]

601. Can bishops dispose of the emoluments or receipts of their chanceries, and in what manner? We premise: These receipts are of two kinds: 1, chancery fees proper—*i.e.*, the perquisites for drawing up letters of dispensation, and the like; 2, alms for dispensations. We now answer: 1. The chancellor should have a fixed salary. The emoluments of the first kind—*i.e.*, the chancery fees proper—may go to make up this salary and to defray the other expenses of the chancery office;[409] the balance must be distributed for pious uses, although the *S. C. C.* has sometimes allowed it to be used by bishops for their own wants.[410] Bishops therefore cannot, except by permission from the Holy See, appropriate any part of these receipts to themselves. Where the chancellor has no fixed salary these emoluments, it

[406] This applies also to bishops in the United States: "Quum facultates extraordinariae episcopis [in U. S.] a Sancta Sede collatae, sine ulla mercede exercendae sint, nulla exigenda est taxa pro dispensationibus ab impedimentis matrimonii . . . iis tantum exceptis casibus, in quibus Ap. Sedes eleemosynam oratoribus injungendam monet" (Conc. Pl. Balt. II., n. 386; cfr. ib., p cxliii; C. Pl. Balt. III., n. 134). [407] Craiss., n. 1054. [408] Ib., n. 1056.

[409] Bouix, l. c., pp. 313. 314. [410] Ferraris, V. Cancellaria, n. 12.

would seem, belong entirely to him.[411] 2. The receipts of the second kind—*i.e.*, the alms for dispensations--must be applied *exclusively* for pious uses, and cannot go even towards making up the chancellor's salary.[412]

602. Is the *Taxa Innocentiana—i.e.*, the decree of Innocent XI. concerning the taxes of episcopal chanceries—at present obligatory all over the world, and even in the United States? It is; for the *S. C. C.*[413] ordered that this decree should be transmitted to *all ordinaries of places;* that it should be kept in a conspicuous place of the episcopal chancery, *and be accurately observed.*[414] Hence, 1, bishops cannot demand or receive anything for dispensations and the like where this is forbidden by the *Taxa Innocentiana;* 2, they can, indeed, fix the taxes of their chanceries;[415] but they should do so according to the rate established by Innocent XI., making due allowance, however, for the difference in the value of money, both as to place and time.[416] For what was formerly purchasable for a Roman scudo costs at present twice as much. This holds true especially of the United States. Hence, in several dioceses of this country,[417] the chancellor's fee for dispensations is, and justly so, $1, where the *Taxa Innocentiana* allows but 30 cents.

603. *Regulations and Customs in the United States respecting the Taxes of Episcopal Chanceries.*—1. As a general rule, a tax—*i.e.*, a determinate sum—is prescribed for dispensations from the publication of the banns;[418] this tax usually ranges between five and ten dollars for a dispensation from *all* the proclamations. Is this tax, though undoubtedly prohibited by the *Taxa Innocentiana*, nevertheless legitimate by reason of custom? Some say, yes; others, no.[419]

[411] Conc. Trid., sess. xxi., c. i., d. R. [412] Craiss., n. 1057. [413] Oct. 8, 1678
[414] Bouix, l. c., p. 311. [415] Ferraris, V. Taxa, n. 12. [416] Craiss., n. 1052.
[417] Cfr. Syn. Alban., ii., p. 15, an. 1869; Syn. Boston., ii., p. 35, an. 1868.
[418] Cfr. Stat. Dioec. Novar., p. 94; Stat. Dioec. Boston., p. 34; Stat. Dioec. Alban., p. 15. [419] Cfr. Bouix, l. c., p. 313.

2. For dispensations from impediments, which are relaxed by virtue of the *facultates* D. and E., a suitable alms should be enjoined.[420] 3. For dispensations from the other impediments no alms is or can be required. 4. Besides the alms, a suitable chancery fee may be demanded; with us it is usually $1 for each instrument or paper, no matter of what kind, issued in the chancery. In most dioceses, however, no such fee is given or demanded. This custom is laudable,[421] and is, no doubt, owing to the fact that chancellors are, in many cases, also pastors of congregations, receive the pastor's salary, and are thus enabled to give their services as chancellors gratuitously. *Note.*—The *Taxa Innocentiana* was never, at least in its entirety, received in the United States.

## Art. XVII.

### *Right of Bishops to Constitute Assistant Priests and assign them a sufficient Maintenance—Division of Perquisites in the United States.*

604. *Can the bishop compel a parish priest to take one or more assistant priests?* Whenever, owing to the number of parishioners,[422] one rector is not sufficient, the bishop not only *can*, but *should*, oblige the parish priest to associate to himself as many assistants as are required.[423] Moreover, the bishop, not the parish priest, is the judge whether or not, and how many, assistants are necessary. The bishop can

[420] Konings, p. 74.—The statutes of the diocese of Newark say: When a dispensation from the impediments *mixtae religionis, disparitatis cultus*, 1mi. *aut* 2di. *gradus affinitatis*, 2di. *gradus consanguinitatis*, or *in radice* is required, application will be made to the bishop, giving the names of the parties, and stating whether they be poor, or in moderate circumstances, or well to do in the world, and he will fix the amount of alms, to be remitted to him for pious uses (Stat., p. 95).

[421] Conc. Trid., sess. xxi., c. i., d. R

[422] Ib., c. iv., d. R.

[423] Bouix, l. c., pp. 554, 555.

assign assistant priests a proper salary, to be taken out of the revenues of the parish.[424]

605. *Can the bishop ordain that a portion of the offerings received in the administration of the sacraments* (*baptism and marriage*) *shall go to make up the income or salary of assistant priests?* In other words, can the bishop divide the perquisites between the pastor and his assistants? The question is controverted. 1. Those who hold the *negative* argue thus: It is certain that these honoraries (*emolumenta stolae*) belong, *jure communi*, to the parish priest exclusively.[425] Moreover, according to the far more probable opinion of canonists, these perquisites are not to be accounted *fructus beneficii parochialis* or *reditus Ecclesiae—i.e.*, revenues of the parish. Now, the law of the Church does not seem to give the bishop power to set apart a suitable livelihood (*portio congrua, sustentatio congrua*, or simply *congrua*[426]) for assistants, except out of the income or receipts of the parish. It is therefore doubtful whether the bishop can assign assistants a share of the perquisites. 2. The *affirmative* is thus maintained: Bishops, according to the Council of Trent,[427] may assign assistants a part of the revenues of the parish for their salary or sufficient maintenance, *or provide for them in some other manner.*[428] Hence, bishops may assign them part of the perquisites. As this is a probable opinion, it follows that if the bishop should decide that part of the perquisites should be given to the assistants, his decision must be complied with.[429] This whole question was agitated on occasion of a decree of Monseigneur Affre, Archbishop of Paris, enjoining that out of the perquisites of each parish a common fund should be made, to be divided between the pastor and his assistants. From this decision the parish priests of Paris

[424] Bouix, De Episc., l. c., p. 328.
[425] Phillips, Lehrb., p. 456.
[426] Ib., p. 329.
[427] Sess. xxi., c vi., d. R.
[428] Bouix, l. c., p. 332.
[429] Craiss., n. 1061, 1062.

appealed to Rome in 1848. The decision of the *S. C. C.* was not published.

606. *Division of the Perquisites of Baptisms and Marriages in the United States.*—Bishops in this country are exhorted to establish, with the advice of their priests,[430] an equitable way of apportioning these offerings among the priests residing in the same house, taking into consideration the chief claim as well as the graver duties of the pastor.

☞ The honorary usually given is at least $3.00 for a baptism, and $5.00 for a marriage. The *Third Plenary Council of Baltimore* (n. 294) says: "Itaque quod spectat ad jura stolae et taxam pro ministeriis ecclesiasticis determinandam, unusquisque episcopus agat *in synodo dioecesana*, vel extra synodum *auditis consultoribus* eas leges ferat, quae clero ac populo suo magis convenire videantur. Meminerint autem (idque expresse in synodo commemoretur) ministeria ecclesiastica pauperibus esse gratis praestanda. Taxam quoque, si qua in synodo constituatur, *Romam mittat, ut Sanctae Sedis approbationi subjiciatur.*"

## Art. XVIII.

### *Rights and Duties of Bishops relative to Preaching, etc.*

607.—I. *Preaching.*—Bishops, according to the Council of Trent,[431] are, *jure divino*, bound, *sub gravi*,[432] to preach personally; if lawfully hindered, they should appoint fit persons to discharge wholesomely this office of preaching.[433] Universal custom, however, has modified this duty. At present bishops are indeed bound to preach from time to time (*aliquando*), but not regularly, nor as often as parish priests.[434] The bishop alone has the right to give permission to preach, and no person

[430] C. Pl. Balt. II., n. 94.

[431] Sess. v., c. ii.; sess. xxiii., c. i., d. R.; sess. xxiv., c. iv., d. R.

[432] St. Lig., lib. iii., n. 269.

[433] Cfr. C. Pl. Balt. II., n. 127.

[434] Bouix, l. c., p. 343; St. Lig., lib. iv., n. 127.

can preach against his will. Regulars cannot preach, even in churches of their own order, in opposition to the will of the bishop. II. *Celebration of the Mass.*—Bishops are obligated to offer up,[437] on Sundays and holidays, the sacrifice of the Mass for the *entire diocese.*[438] They should, unless lawfully hindered, celebrate solemn Mass at Easter, Christmas, Epiphany, Ascension, Pentecost, Feast of SS. Peter and Paul, All Saints, etc.[439] III. *Administration of Church Property.*—The bishop is the administrator, or rather guardian, of the temporalities of the churches or parishes of his diocese.[440] He is obliged to leave to his cathedral all sacred vessels, ornaments, and the like which were purchased with church moneys. Hence, he should make an authentic and accurate inventory[441] of all things used for divine worship and purchased by him, after his appointment to the see, with church moneys or ecclesiastical revenues. Sacred things thus bought belong to the cathedral.[442]

## Art. XIX.

*Right of Taxation as Vested in Bishops—Contributions to be given Bishops—Collections ordered by Bishops in the United States—"De Juribus Utilibus Episcoporum."*

608.—I. ***Contributions demandable by Bishops in general.*** —The faithful are obliged to contribute for the general wants of the Church, and especially of their own diocese. The bishop, therefore, can ask for contributions from all his dioceseners, and especially from his clergy, for the needs of the diocese.[443] These offerings, whether of the faithful or clergy, should, however, as far as possible, assume the form

[437] St. Lig., H. Ap., tr. vii., n. 65; Conc. Pl. Balt. II., n. 366.

[438] Konings, n. 1135, 1322.

[439] Craiss., n. 1066.

[440] Cfr. Conc. Pl. Balt. II., n. 182–205.

[441] Ib., n. 188.

[442] Craiss., n. 1069, 1070.

[443] Phillips, Lehrb., p. 289.

of voluntary contributions, not of taxes or assessments, in the strict sense of the term.[444]

609.—II. *Contributions in particular.*—Of the contributions made to bishops some are ordinary—those, namely, which are given every year, or at least at stated times; others extraordinary—to wit, those given only in special cases or emergencies. I. The following, chiefly, are the *ordinary or regular contributions:* 1. The *cathedraticum* (also *synodaticum, pensio paschalis*), which means a fixed sum of money to be annually given the ordinary out of the income of the churches in the diocese.[445] It must be given by all churches in charge of secular priests, but not by those of regulars, save when they have the care of souls attached. In most Catholic countries the cathedraticum has gone out of use, bishops there being supported by salaries from the government or from other sources;[446] it still exists in England, in the Greek Church, in the United States, etc.[447] In this country it is, in fact, the main support of bishops, as well as the chief means to defray the expenses incident to the discharge of the various episcopal duties. It is made up from the income of congregations, not out of the salary of pastors or assistants.[448] The amount should be determined by the bishop, with the advice of his clergy.[449] 2. *Procuratio* (also *circada, comestio, albergaria*)—*i.e.*, the hospitality to be extended to the bishop when he canonically visits the diocese. 3. Contributions for the support of the seminary (*seminaristicum, alumnaticum*). 4. Fees of the episcopal chancery (*jus sigilli*).[450] 5. The share falling to bishops from legacies left to a church (*quarta mortuaria, canonica portio, quarta episcopalis*.[451] 6. The fourth part of tithes (*quarta decimationum*).[452] The two last named are abolished at present. They were

[444] Walter, Lehrb., § 190.
[445] Reiff., lib. iii., tit. xxxix., n. 10–18.
[446] Cfr. Craiss., n. 1072.
[447] Walter, l. c.
[448] Conc. Pl. Balt. II., n. 100.
[449] Ib.
[450] Phillips, l. c., p. 290.
[451] Soglia, vol. ii., p. 20.
[452] Phillips, Kirchenr., vol. vii., p. 874

based on the division of ecclesiastical revenues as made in ancient times, by which the bishop received one-fourth of all ecclesiastical revenues.

☞ The ordinary taxes are subdivided into *new* and *old.* An old or ancient tax (*taxa antiqua, census antiquus*) is one which is expressly authorized by the general law of the Church. The cathedraticum, the seminary contribution, and the hospitality extended to the bishop when he makes the visitation of the parish, are, at present, the only ancient ordinary taxes due to the bishop. A new ordinary tax (*taxa nova*) is one which is not expressly authorized by the general law.[453]

☞ Now, the sacred canons prescribe that the bishop cannot impose a new ordinary tax—at least, not a perpetual one—nor increase the old ones, except by leave from the Holy See. Thus the Council of Lateran (an. 1179) decrees: "Prohibemus insuper ne ab Episcopis vel aliis Praelatis *novi census imponantur ecclesiis, nec veteres augeantur.* . . Si quis vero aliter fecerit, irritum quod egerit, habeatur." [454]

☞ II. *Extraordinary taxes or contributions* (*Subsidia charitativa, exactiones extraordinariae*).—By these taxes we mean those which the bishop, for manifest and sufficient cause, demands in special cases of necessity.[455] Now, what are the conditions under which the general law of the Church or the sacred canons allows the bishop to ask for an extraordinary tax or collection? 1. There must be a *sufficient* cause; such as (*a*) to defray the expenses of the bishop's consecration; (*b*) of his visit *ad limina;* (*c*) or attendance at an oecumenical council.[456] 2. The cause must be *clearly* and *manifestly* sufficient. For the law expressly requires not merely that the *causa* be *rationabilis,* but also that it be *manifesta.* In case of doubt, whether the cause is sufficient or whether the tax is exorbitant, the matter should be settled

[453] De Angelis, l. iii., t. 39, n. 1.
[454] Cap. 7, De Cens. (iii. 39).
[455] Reiff., l. c., n. 19.
[456] Reiff., l. c., n. 30.

by recourse to the superior or by arbitrators selected by consent of both parties.[447] 3. The tax or contribution asked must always be *moderate*, and never oppressive or burdensome.[448] 4. The bishop can insist upon an extraordinary contribution *only when his other revenues are insufficient to meet the special emergency*. 5. The *consent*, or, at least, the *advice* of the cathedral chapter is requisite. 6. Where the *Taxa* Innoc. obtains, *the leave of the Holy See is also necessary*, except in one case, namely, where a bishop, in a diocese in which it has been the custom to do so, asks for a contribution to defray the expenses of his consecration. 7. Finally, the tax should be asked *cum charitate*, as the law expressly says.[a] In other words, the bishop should ask for it as a *voluntary* offering rather than as *tax* in the strict sense of the term. Canonists generally remark that at the present day extraordinary contributions, at least in the form of taxation, have gone out of use in most countries.

☞ 610. III. *Contributions given Bishops in the United States.*—The *Third Plenary Council of Baltimore* (n. 20, in fine) decrees: "Item, *praehabito Consilio Consultorum*, necessarius erit *recursus ad S. Sedem in singulis casibus*, in quibus agatur de imponenda *nova taxa pro Episcopo quae excedat limites a canonibus constitutos*." In other words, wherever there is question of imposing a new tax, collection, or contribution for the bishop, which goes beyond the rules laid down by the sacred canons, the bishop is obliged, (*a*) first to take the advice of his diocesan consultors, (*b*) and then also obtain leave from the Holy See, and that in each individual case.

☞ What, then, are the rules enacted by the sacred canons in regard to new taxes for the bishop? We have seen that the canons forbid the bishop (*a*) to impose a *new* ordinary tax, that is, any ordinary tax other than the cathedraticum, seminary dues, and the hospitality given at the episcopal visitation; (*b*) to *increase* any of these old taxes;

[447] Reiff., l. c., n. 36. [448] Cap. *Cum Apostolus* 6. De Cens. (iii. 39).

[a] Cap. *Cum Apostolus* 6, cit.; Craiss., n. 1072; Walter, § 191.

(*c*) to impose an *extraordinary* tax, except in the manner and under the conditions already explained above. These conditions are given by the cap. 6, *De Cens.*; the S. C. C. *in Gerund.* Feb. 17, 1663; the *Taxa Innoc.* Oct. 8, 1678.

## Art. XX.

### *Prerogatives of Honor of Bishops—De Juribus Honorificis Episcoporum.*

611.—I. *Precedence* among bishops themselves is regulated by the time of their consecration; so that a bishop who is first consecrated precedes all other bishops consecrated after him.[459] Bishops take precedence of apostolic prothonotaries. In his own diocese a bishop takes precedence even of archbishops, save his own metropolitan; however, as a matter of courtesy, the *S. C. C.* recommends that the diocesan should give the preference to all strange bishops and archbishops.[460] When the bishop visits a church in his diocese he should be received solemnly by the clergy; and, if he performs or assists at sacred functions in any part of his diocese, an elevated seat (*thronus*) should be prepared for him at the Gospel side of the sanctuary; the throne should be decorated, though not in red, and surmounted by a canopy or baldachin.[461] II. *The insignia* of bishops, besides their pontifical robes in general, are chiefly: 1, the mitre (*mitra, cidara bicornis, infula*); 2, the crosier (*baculus pastoralis, pedum*), or pastoral staff, which terminates in a curve, and is the symbol of his office of shepherd of souls; 3, the ring, the emblem of his union with his diocese; 4, the golden pectoral cross (*pectorale*), which bishops wear constantly on their breasts.[462] III. *Privileges of Bishops.*—Among others, bishops, 1, can take with them on journeys a portable altar (*altare viaticum, portatile*), in order that they may be able to say Mass everywhere, even outside of

[459] Phillips, l. c., p. 890. [460] Ib., p. 891. [461] Ib., p. 892.
[462] Phillips, Lehrb., pp. 290, 291.

churches. 2. When out of their own dioceses they may everywhere go to confession to, and be absolved by, their own priests, as also by approved confessors of other dioceses, even out of the diocese for which these confessors are approved.[463] 3. Bishops, moreover, do not, unless expressly mentioned, incur censures, whether imposed *ipso jure* or by judicial sentence (*ab homine*). 4. A bishop is addressed by the Pope as *Venerabilis Frater* or *Fraternitas Tua;* by others as *Revendissime et illustrissime Domine.*[464] In his solemn or official acts—*v.g.*, dispensations, ordinances, and the like—he uses the formula:[465] *Ego N. Dei et Apostolicae Sedis gratia* (or *misericordia, miseratione*) *Episcopus* . . . In this formula he omits his family name and makes use of his baptismal name only.[466] 5. He may celebrate Mass and perform sacred functions *in pontificalibus* in all, even the exempt and privileged, churches of his diocese.[467]

[463] Phillips, Kirchenr., l. c., pp. 898, 899. [464] Ib., p. 900. [465] Ib., p. 901. [466] Gerlach, l. c., § 220. [467] Craiss., n. 1078

## CHAPTER VI.

### VARIOUS KINDS OF BISHOPS AND OF PRELATES HAVING QUASI-EPISCOPAL JURISDICTION.

612. There are two kinds of assistants or vicegerents of bishops. Some assist the bishop in the performance of the functions of the *episcopal order—v.g.*, in conferring sacred orders;[1] others in the exercise of *episcopal jurisdiction*. Auxiliary bishops belong to the former, coadjutor bishops to the latter class.[2]

### ART. I.

#### *Of Auxiliary Bishops.*

613. Auxiliary bishops[3] (*episcopi suffraganei, vicarii in pontificalibus*) are titular bishops appointed by the Holy See to assist ordinary bishops, not in the exercise of their *jurisdictio*,[4] but merely of the *ordo episcopalis—v.g.*, to give confirmation. We say, 1, *titular bishops* (*episcopi titulares, episcopi in partibus infidelium, episcopi annulares*); for they are consecrated with the title of some diocese in the hands of the infidels.[5] We say, 2, *appointed by the Holy See.*[6] Now, they

[1] Walter, l. c., p. 285. [2] Ib., pp. 287, 288. [3] In German, *Weihbischöfe.*

[4] They may, however, be appointed vicars-general, and thus assist the bishop in the exercise of his jurisdiction (Soglia, vol. ii., p. 28; cfr. Bened. XIV., De Syn., lib. xiii., cap. xiv., n. 4).

[5] According to the present discipline of the Church. every bishop is placed over some diocese, governed by him either actually or at least potentially (Bened. XIV., l. c., cap. viii., n. 12).

[6] Usually at the request of those bishops who stand in need of them (Phillips, Lehrb., p. 325).

are appointed only, 1, when they are really needed; 2, where it is customary to have them; 3, on condition that a proper salary (*congrua*) be assigned them. The reasons for which they are usually appointed are, 1, where a bishop does not reside in his see; 2, or cannot perform the episcopal functions of order on account of old age, infirmity, or the great extent of his diocese. Auxiliary bishops are not bound to make the visit *ad limina*. Their office lapses so soon as the bishop whom they assist dies or in some other way relinquishes his see.[7] They exist, at present, chiefly in Prussia, Austria, Spain, etc. The Pope makes use of titular bishops in the discharge of his apostolic duties.[8]

## Art. II.

### *Of Coadjutor Bishops.*

614. By coadjutors (*coadjutores*) we mean those who are appointed by the proper superior to assist bishops in the administration of the diocese.[9] Coadjutors, therefore, must be distinguished from auxiliary bishops. The latter assist bishops in the discharge of the functions of the episcopal *ordo*;[10] the former in the exercise of the episcopal *jurisdictio*.[11] *How many kinds of coadjutors are there at present?* 1. By reason of their duties (*ratione materiae*) coadjutors are divided into temporal (*coadjutores in temporalibus tantum*) and spiritual (*coadjutores in spiritualibus, coadjutores in spiritualibus simul et temporalibus*).[12] The latter are appointed to assist the bishop in the performance of his spiritual duties, whether of order or jurisdiction, and not unfrequently also in the man-

[7] Soglia, l. c., p. 29.
[8] Craiss., n. 1083.
[9] Bouix, De Episc., vol. i., p. 498; Thomassin., p. ii., l. ii., c. lv. seq.
[10] Walter, p. 286.
[11] Phillips, l. c., § 163.
[12] Leurenius Forum Benef., Tr. de Coadjutoriis, qu. 308. Coloniae Aggripp., 1739.

agement of Church property. In order to be able to exercise *pontificalia*, they are consecrated a titular bishop; the former only in the administration of the temporalities of the diocese, and consequently they need not be consecrated bishops.[13] 2. Again, by reason of their tenure of office (*ratione temporis et formae*), they are divided into such as hold office temporarily (*coadjutores temporarii, temporales*)—*i.e.*, until the bishop's death or recovery—and such as hold office permanently (*coadjutores cum futura successione, cum jure successionis, perpetui*)—that is, those who are appointed with the right of succession at the death of the bishop.[14] We ask: Are coadjutorships *cum jure* prohibited at present? They are, generally speaking.[15] The reasons are: 1. They carry with them the appearance of hereditary succession[16]—a thing forbidden by the sacred canons. 2. Because they contain an expectancy.[17] We said above, *generally speaking;* for, in certain cases—namely, where the urgent necessity or evident utility of the diocese so demands—perpetual coadjutors may be appointed by the Holy See.

615. *Appointment of Coadjutors.*—I. *To whom belongs the right of appointment?* To the Holy See solely.[18] In certain cases, however—*v.g.*, if the diocese is at a great distance from the Holy See—a bishop who, by reason of age or infirmity, is unable to discharge his duties, may himself, by virtue of Papal authority, select a *temporary*[19] coadjutor, with the advice ar l consent, however, of his chapter. Nay, in case the bishop is insane, the chapter itself, provided two-

[13] Bouix, l. c., p. 498. [14] Leuren., l. c., n. 2. [15] Salz., vol. ii., p. 170.

[16] Conc. Trid., sess. xxv., c. vii., d. R.

[17] Namely, in this: that they confer upon coadjutors the right to succeed, *ipso jure*, at the death of the bishop. As such an expectancy may occasion in others a desire for the death of the bishop, it is detrimental to ecclesiastical discipline. Cfr. Phillips, Lehrb., § 163; Leuren., l. c., qu. 309.

[18] Craiss., n. 1099, 1100.

[19] *Perpetual* coadjutors must *in all cas s* be appointed by the Holy See. Cfr. Bouix, l. c., p. 500.

thirds of the canons consent, may appoint such coadjutor; a report of the whole case should be sent to Rome as soon as possible. II. *For what causes may coadjutors be appointed?* For these chiefly: 1. Chronic or incurable bodily disease of such nature as to make it impossible for the bishop to perform his duties—*v.g.*, loss of speech, blindness, paralysis, and the like; 2, old age—*v.g.*, age of 60 or 70; 3, insanity;[20] 4, great negligence on the part of the bishop in the discharge of his duties.[21] Both perpetual and temporary coadjutors are appointable for the reasons just given. Where a temporary coadjutor is all that is needed a perpetual one should not be appointed. Although the Holy See does not usually assign a perpetual, or even a temporary, coadjutor to a bishop against his will, yet it may do so—in fact, has done so—for just cause.[22] III. *Mode of Appointment in the United States.*—The mode which obtained formerly and is described in the previous editions of this work, has been changed by the *Third Plenary Council of Baltimore*, as follows: When there is question of appointing a coadjutor to a bishop or archbishop *cum jure successionis*, the law laid down above under Nos. 345 sq. must be observed. Where, however, a coadjutor bishop or archbishop is to be appointed who shall not have the right of succession, it is sufficient for the bishop who wishes to have such coadjutor to present to the Holy See the person whom he wishes to have appointed.

616. *Rights of Coadjutors.*—I. The nature of these rights depends chiefly upon the tenor of the apostolic letters-patent by which coadjutors are appointed.[23] If, however, the apostolic letters are not sufficiently explicit,[24] the powers in question must be determined by the reason which caused the appointment.[25] Thus, 1, a coadjutor, whether temporary or permanent, assigned to an *insane* bishop, obtains *complete* administration of the diocese in temporal as well as in spiritual matters;[26] in fact, such coadjutor has the same

[20] Leuren., l. c., qu. 339. 340, 341. 342. [21] Bouix. l. c., p. 506.
[22] Ib. p. 507. [23] Leuren., l. c., qu. 397. [24] Ib. (5°)
[25] Soglia, vol. ii., p 30 [26] Craiss, n. 1103.

power as though he were the actual bishop of the diocese, he cannot, however, alienate ecclesiastical goods.[28] 2. On the other hand, a coadjutor given to a bishop who is merely *infirm* or *old* can only perform those duties which the bishop is unable or unwilling to discharge, but not those which the bishop has reserved to himself. Hence, it may be said that, as a rule, the coadjutor in this case should undertake nothing without the advice and consent of the bishop.[29] But, if the bishop objects unreasonably to the exercise of powers by the coadjutor, the latter can proceed against the will of the former; the more prudent course, however, is to refer the matter to the Holy See.[30] II. *Salary of Coadjutors.*—Coadjutors are entitled to a competent salary (*congrua, sustentatio congrua*). All agree that if the ecclesiastical income of the bishop is large enough to support himself as well as his coadjutor, the latter should receive his salary from such income.[31] The difficulty is: What is to be done in case the above income is insufficient for both? Should it go to the bishop or to the coadjutor in such case? The question is disputed.[32] Practically speaking, however, this difficulty is of no consequence. For the Holy See, before appointing a coadjutor, usually determines the amount of salary, as well as the source whence it is to be derived. If possible, the coadjutor should have suitable lodgings in the episcopal residence.[33] III. *How do the powers of coadjutors lapse?* 1. Those of temporary coadjutors lapse with the death, deposition, or resignation of the bishop.[34] 2. Coadjutors *cum futura successione* succeed *ipso jure*, and without any new election, so soon[35] as the bishopric falls vacant.[36] Bishops in the United States, who hold the Church property of the dio-

[28] Bouix, l. c., p. 509. [29] Salz., l. c., p. 170. [30] Bouix, l. c., pp. 510–512.
[31] Ib., p. 516. [32] Cfr. Ferraris, V. Coadjutor, n. 31–42.
[33] Bouix, l. c. [34] Craiss., n. 1112.
[35] Then, also, they lay aside the title of their see *in partibus*, and assume that of their actual diocese. [36] Soglia vol. i., p. 220.

cese in their own name, should, in their testament, name their coadjutor—if they have one—their heir.[37] With coadjutors may be classed vicars-apostolic who are appointed by the Holy See to govern a diocese whose bishop is suspended from the exercise of jurisdiction for having abused his power.[38]

## Art. III.

### *Of Regular Bishops.*

617.—I. Regulars may be—in fact, are sometimes—raised to the episcopal dignity; the permission, however, of their superior is requisite.[39] A regular bishop is, from the day of his promotion in Papal Consistory, released merely from the obligation of observing those rules of his order which are incompatible with the episcopal office and dignity; but not from any of the essential vows.[40] Still, he is exempt as to some of the effects of the vows of obedience and poverty. Thus, he is no longer bound to obey the prelate of his order, but only the Sovereign Pontiff. Again, he remains, it is true, incapable of acquiring property for himself, but he may freely use temporal goods to support himself in a manner befitting his exalted station.[41] II. A regular bishop, moreover, is obligated to wear the habit of his order as to its *color;* the *shape* of his cassock, however, is the same as that of secular bishops.[42] He must, as a rule, recite the office or breviary of his diocese, not of his order.[43] If he should resign his episcopal see, or be removed from it, he is bound to return to his monastery, unless he obtains permission from the Pope to remain out of it.[44]

[37] Conc. Pl. Balt II., n. 189.
[38] Salz., l. c., p. 171.
[39] Bouix, l. c., p. 496.
[40] Ferraris, V. Episcopus, art. vii., n. 1, 2.
[41] Ib., n. 2.
[42] Ib., n. 4, 5.
[43] Ib., n. 7.
[44] Ib., n. 20.

## Art. IV.

### *Of Inferior Prelates.*

618. Of prelates inferior to bishops (*praelati inferiores*)—*i.e.*, those who, though not clothed with the episcopal character or *ordo*, are nevertheless vested by the Holy See with greater or less episcopal rights[45]—there are three classes: the lowest, the middle, and the highest. I. *The lowest class* consists of those who preside only over such persons, both lay and ecclesiastical, as are attached or belong to a certain church or monastery.[46] General superiors of religious orders, provincials, and abbots immediately subject to the Holy See, are prelates of this kind.[47] Regular prelates of this class cannot hear or confer upon others faculties to hear the confessions of seculars.[48] We say, *seculars;* for regular confessors hold immediately of their superiors,[49] not of bishops, faculties to absolve not only professed (male) members of their own order, but also novices and secular domestics living in the monastery. II. *The middle or second class* is made up of those who exercise jurisdiction over the inhabitants—*i.e.*, over the clergy as well as laity—of a certain district or territory *which is situate in and entirely surrounded by the diocese of another bishop.* Hence they are named *praelati in dioecesi.* III. *The highest or third kind* is composed of those who exercise jurisdiction in a district (*i.e.*, in one or several cities or places) *which is altogether separate from and outside of any diocese whatever.* They are consequently termed *praelati nullius—i.e., dioeceseos.* They have all the rights of ordinary bishops, save those which require the exercise of the *ordo episcopalis.*[50]

[45] Bouix, l. c., p. 532.
[46] Phillips, Lehrb., §. 149.
[47] Soglia, vol. ii., § 18.
[48] Bouix, l. c., p. 543; De Jur. Reg., t. ii., p. 220.
[49] Konings, n. 1395.
[50] Our Notes, p. 348.

# CHAPTER VII

## OF THE BISHOP'S ASSISTANTS OR VICEGERENTS IN THE EXERCISE OF EPISCOPAL JURISDICTION.

619. Under this head we shall briefly treat, 1, of vicars-general; 2, of archdeacons and arch-priests; 3, of vicars-forane or rural deans.

### ART. I.

### *Of Vicars-General.*

#### § 1. *What is meant by a Vicar-General?*

620. By a vicar-general (*vicarius generalis*, *vicarius in spiritualibus*, *officialis*) we mean one who is legitimately appointed to exercise, in a general way, episcopal jurisdiction in the bishop's stead, and in such manner that his acts are considered the acts of the bishop himself.[1] We say, 1, who is *legitimately* appointed. Now, vicars-general may be appointed not only by bishops, but also by the Pope.[2] We say, 2, to exercise *jurisdiction;* for vicars-general do not necessarily act as vicegerents of bishops in regard to the functions of the *ordo episcopalis*.[3] We say, 3, in a *general way;* for the jurisdiction of vicars-general should be *general*, at least morally speaking.[4] For it were a contradiction in

[1] Bouix, De Judic., vol. i., p. 358.

[2] Leuren., For. Benef. Tr. de Vicar Gen., cap. i., qu. 26. [3] Craiss., n. 1120.

[4] We say, *morally speaking*. Hence, the jurisdiction of V. G. may be—in fact, is—in various matters restricted, both by the *jus commune* (*a jure*) and by bishops (*ab homine*). It cannot, however, be restricted to such an extent as to make it cease to be morally universal (Bouix, l. c., pp. 352–358).

terms to say that a person is the *general* vicegerent of another, unless he can, at least in some sense, *universally* take the place of the person for whom he acts. Hence, a vicar appointed by the bishop for a certain district only, but not for the whole diocese, would not be, even though he received general powers for such district, canonically speaking, a *vicarius generalis*, but merely a *delegatus*, and consequently appeals from him would have to be made to the bishop, not to the metropolitan. Now, the jurisdiction of vicars-general is morally universal (*a*) as to *territory—i.e.*, it extends to *all persons* in the diocese; (*b*) as to *matters*. We say, 4, *in the bishop's stead;* hence, the *jurisdictio* of vicars general, though *ordinaria*, not *delegata*,[5] is rightly named *jurisdictio vicarialis* or *ministerialis*.[6] We say, 5, *in such manner that his acts*, etc.; that is, these acts have the same effect in law as if done by the bishop himself. The vicar-general should reside in the episcopal city.[7]

621. Is the vicar-general necessarily vested with jurisdiction *in temporalibus* as well as *in spiritualibus?* We premise: By a *vicarius generalis in temporalibus* we mean one whom the bishop selects to manage the Church property of the diocese, as also his own income as bishop; by a *vicarius generalis in spiritualibus*, one who is deputed to exercise ecclesiastical jurisdiction relative to other matters.[8] We now answer: The question is controverted. The *affirmative*, as held by Ferraris[9] and others, maintains that a vicar-general, clothed with jurisdiction *in spiritualibus* only, but not *in temporalibus*, is not, rigorously speaking, the *general* vicegerent of the bishop, and, therefore, no vicar-general. The *negative*,

[5] Cfr. tamen De Camillis, Inst. Jur. Can., vol. i., p. 224. Paris, 1868.

[6] Phillips, Lehrb., p. 333.

[7] If there are two vicars general, both should reside in the episcopal city (*in eodem loco, in quo episcopus sedem habet*). Ferraris, V. Vicarius Gen., art. i., n. 1, 8, 9; cfr. Reiff., lib i., tit. xxviii, n. 16, 17.

[8] Bouix, l. c., p. 353.

[9] V. Vicarius Gen., art. ii., n. 1.

however, which holds that vicars general need only be vested with power *in spiritualibus*, seems more conformable to the Council of Trent.[10] It is universally admitted that a *vicarius gen. in temp. tantum* cannot be properly called vicar-general, but rather procurator (*procurator, oeconomus*).[11] The Second Pl. C. of Balt. recommends that such procurators, distinct from vicars-general proper, be appointed: "Valde in episcopi solatium verteret, si etiam oeconomum seu in temporalibus rebus gerendis procuratorem, laicum sive clericum (episcopus) nominaret, cujus foret muneris, domus episcopalis curam in temporalibus habere, necnon et ecclesiarum bonorumque ecclesiasticorum ad nutum episcopi temporalem gerere administrationem." [12]

622. Does the vicar-general receive jurisdiction from the law or from the bishop? The more common opinion is that, although the vicar-general is ordinarily appointed by the bishop, he nevertheless holds from the common law (*a lege, a jure, ratione officii sui*), and not from the bishop (*non ab episcopo*).[13] For a person is said to have jurisdiction from the law when, by virtue of the *jus commune*, his powers are determined *certo et fixo modo, quem episcopus mutare nequit*.[14] Now, the jurisdiction of vicars-general is so determined; for, as was seen, his jurisdiction, whether the bishop wills it or not, extends, by virtue of the common law, morally to all matters and over the entire diocese, and is in this respect not dependent on or alterable by the bishop.[15] Nor can it be objected that the vicar-general receives jurisdiction through the episcopal appointment. For this appointment is but the means by which the law confers jurisdiction upon him.[16]

623. Is the *jurisdictio* of the vicar-general *ordinaria* or only *delegata?* It is *jurisdictio ordinaria*. This is certain at

[10] Craiss., n. 1124.
[11] Leuren., l. c., qu. 8, n. 2.
[12] C. Pl. Balt. II., n. 75; ib., footnote 4.
[13] Leuren., l. c., qu. 72.
[14] Bouix, l. c., p. 360.
[15] Ib., p. 361.
[16] Our Notes, pp. 70, 71

present.[17] In fact, his jurisdiction is one and the same with that of the bishop himself; for the tribunal (*consistorium, auditorium*) of the vicar-general is considered in ecclesiastical law the tribunal of the bishop; the person of the vicar-general, the person of the bishop; and the sentence pronounced by the vicar-general, the sentence of the bishop. This holds so strictly that no appeal lies from the vicar-general to the bishop, because it would be appealing from the same person to the same person.[18] Now, the jurisdiction of the bishop is ordinary; hence, that of the vicar-general is likewise ordinary.[19] But it may be objected: Ordinary jurisdiction is essentially perpetual; now, that of the vicar-general is revocable *ad nutum episcopi;* hence, etc. We deny the major. Ordinary jurisdiction is that which is annexed to some office, but not that which is annexed to it irrevocably. Thus, Papal legates have ordinary, though not irrevocable, jurisdiction.[20]

624. How is the principle to be understood: *A sententia vicarii generalis non datur ad episcopum appellatio?* This principle, being unanimously admitted by canonists, is incontrovertible.[21] Hence, 1, no custom to the contrary can obtain; it holds, 2, even though the parties interested should consent to an appeal to the bishop; 3, of extra-judicial as well as judicial appeals; 4, even of cases or matters for which the vicar-general needs a special commission, provided such matters are committed to him simultaneously with his appointment as vicar-general. We say, *simultaneously*, etc.: for the principle in question does not—at least, according to some—extend to matters specially delegated to him *after* his appointment to the vicar-generalship (*extra commissionem generalem vicariatus*); because in this case the V. G. pro-

[17] Formerly the question was controverted. Bouix, l. c.

[18] Bouix, l. c., pp. 363, 364.

[19] The V. G. is therefore properly named *ordinarius*. Ferraris, l. c., art. i, n. 41–43. [20] Craiss., n. 1127. [21] Bouix, l. c., pp. 372–376.

ceeds as *delegatus*, not as *ordinarius*, and hence an appeal lies from him to the bishop.[22] Observe, that even in cases where no appeal lies from the vicar-general to the bishop, a petition can always be addressed to him for the remission of the penalty imposed by his vicar-general.[23] The terms *vicarius generalis* and *officialis* are, "de jure communi," synonymous. In fact, in Italy both these terms are applied to one and the same person vested with voluntary and contentious jurisdiction. But in France and some other countries the *officialis* is one who exercises contentious, the *vicarius generalis* one who has but voluntary jurisdiction.[24] Though, *de facto*, both the *jurisdictio voluntaria* and the *jurisdictio contentiosa* may be—in fact, are sometimes—exercised by two different officials, yet, *de jure*, both are essentially exercisable by one and the same vicar-general.[25]

### § 2. *Appointment of the Vicar-General.*

625. We shall explain, 1, the qualifications requisite in a vicar-general; 2, by whom he is to be appointed; 3, whether the bishop is obligated to appoint a vicar-general, and whether he can have several; 4, in what manner the appointment is to be made. I. *Qualifications required in a Vicar-General.*—1. The vicar-general should be an ecclesiastic—that is, he should be, at least, tonsured—though he need not be in major or even minor orders.[26] 2. No ecclesiastic,[27] while actually married, can be appointed vicar-general. 3.

[22] Cfr. Leuren., l. c., qu. 74. [23] Bouix, l. c., p. 376.

[24] Craiss., n. 1134. In the United States the term *officialis* is almost unknown, and that of vicar-general is the only one used.

[25] Bened. XIV., De Syn., l. iii., c. iii., n. 2.

[26] The *schema* of the *Vatican Council*, "de vicario generali," says: Expedit etiam ut vicarii generales *sacerdotali sint charactere insigniti* (Martin, Docum. Conc. Vatic., p. 128).

[27] We here speak, of course, only of those ecclesiastics who are not yet in major orders, and who, consequently, are allowed to marry (Bouix. De Jud., t. i., pp. 388, 389).

A vicar-general should be twenty-five years of age,[28] born in lawful wedlock; he should, moreover, be a doctor in theology or a licentiate in canon law. We ask: Can a religious be made vicar-general? It is certain that he cannot without the permission of his superior. But is the consent of the Holy See also required? Speaking in general, the question is disputed. The affirmative, which seems the more probable opinion, is based on the argument that no regular can reside out of his monastery (*extra claustra*) without permission from the Holy See.[29] Bouix adds that, at the present day, it is not unfrequently expedient to select the vicar-general from some religious community. Can a bishop, parish priest, rector of a seminary, or relative of the bishop be named vicar-general? 1. *A bishop* not actually in charge of a diocese may undoubtedly become the vicar-general of another bishop, both *in pontificalibus* and *in aliis spiritualibus*. 2. *No parish priest*, and, in general,[30] no clergyman having the care of souls, especially if it be outside the episcopal city, can be vicar-general. The reason is that the duties respectively of a vicar-general and pastor are so grave that, as a rule, they cannot be simultaneously fulfilled in a proper manner by the same person.[31] Hence, they are *officia incompatibilia*. Nevertheless, the appointment of a pastor as vicar-general, though illicit, would not seem to be invalid. 3. *Rectors of seminaries* should not be made vicars-general,

[28] The above *schema* of the *Vatican Council* enjoins "ut illud [*i.e.*, vicarii gen. officium] ecclesiasticis viris deferatur *non minoribus annis triginta*, et in jure saltem canonico doctoribus, vel alias quantum fieri poterit, idoneis (Martin, l. c.)

[29] Clem. ad prioratus (*i.e.*, tit. ix. lib. iii.)

[30] The *schema* above quoted of the *Vatican Council* proposes: "Et quia necesse est ut a fori interni ministerio omnis pellatur suspicio quod ad externi fori possit adhiberi negotio, nec permittendum sit ut a suo munere quispiam abducatur, in quod incumbere totus debet, propterea episcopi *canonicis poenitentiariis, parochis, ceterisque curam animarum habentibus*, itemque obtrectationis vitandae causa, *suis fratribus aut nepotibus, vicarii generalis munus non committant*" (Martin, l. c.)

[31] Ferraris, V. Vicarius Generalis, art. i., n. 27

because it is ordinarily impossible for them to properly discharge their duties toward the seminary without neglecting those of the vicar-generalship. 4. Nor should relatives (*v.g.*, uncle, nephew, brother) of the bishop be named vicars-general.[32] Can natives of the episcopal city or of the diocese be made vicars-general? According to Cardinal de Luca, the bishop is bound to name as his vicar-general a stranger (*exterus*)—that is, one who neither belongs to the clergy of his diocese nor is a citizen of the episcopal city. Bouix goes so far as to say that, *de jure communi*, it is unlawful for a bishop to appoint an ecclesiastic of his own diocese to the vicar-generalship, save by Papal dispensation.[33] The *jus commune* in this respect still obtains, and should consequently be observed, except, perhaps, in some countries where it may have been abrogated by contrary custom lawfully prescribed.[34] However, the appointment of a diocesan ecclesiastic, though illicit, is valid. *Customs in the United States.*—Generally pastors, especially those of cathedrals, and sometimes rectors of seminaries, owing chiefly to the scarcity of priests, are appointed vicars-general. As a rule, the vicar-general is selected from among the diocesan clergy.

626.—II. *Who has the power of appointment?* 1. Every bishop, no matter whether his diocese be large or small, can appoint a vicar-general, and that, at present, without the consent or even advice of his chapter.[35] 2. The administrator of a vacant diocese, as also the administrator of a diocese whose bishop is still living, may appoint a vicar-general for himself, because he is possessed of the ordinary jurisdiction of the bishop.[36] 3. The Holy See may—in fact, sometimes does—appoint a vicar-general—*v.g.*, where the bishop, though unable alone to govern his diocese, because of its extent and the like, nevertheless neglects to name a vicar-

[32] Craiss., n. 1143. Cf. S. Thom., 2, 2, q. 63 art. 2, ad. 1.

[33] Cfr. Leuren., For. Benef. Tr. de Vicario Gen. Episcopi, c. i., qu. 47.

[34] Ferraris, l c., n. 34. [35] Leuren., l c., qu. 20, 21. [36] Ib., qu. 21

general. 4. In no case can the metropolitan appoint the vicar-general of a suffragan.[37] A bishop elect[38] cannot appoint a vicar-general before he has taken possession of his see; he may, however, make the appointment prior to his consecration, provided he has taken possession of his see—that is, provided he has actually exhibited the bulls of his elevation. III. *Obligation of appointing a Vicar-General.*—Is a bishop obligated to have a vicar-general? The question is controverted. According to Bouix and others, a bishop,[39] if he resides in his diocese, is not bound to appoint a vicar-general unless the Holy See commands him to do so. We say, if he resides in his diocese; for if he were absent from his see, he would be obliged to name a vicar-general, in order to ensure unity of government during his absence. Can the bishop have several vicars-general? 1. It is certain that no bishop, however extensive his diocese may be, *is obliged* to have two or more vicars-general.[40] The only exception occurs in dioceses where the diocesans are of different languages and rites—*v.g.*, Greek and Latin rites;[41] for, in this case, the bishop is bound to appoint a vicar-general, and that a bishop, for those of a different rite.[42] 2. It is even controverted whether a bishop *can*, as a rule, name several vicars-general. The affirmative—to wit, that several vicars-general,[43] each having jurisdiction *in solidum*, may

[37] Bouix, l. c., p. 405.

[38] Even though he has already received the bulls (Ferraris, l. c., n. 17).

[39] Especially if he is a canonist and has a small diocese (Phillips, Lehrb., p. 333).

[40] The *schema*, above quoted, of the *Vatican Council* says: "Quibus vero in dioecesibus plures vicarii generales deputari solent, hi *numerum duorum vel trium non excedant*, omnesque *in solidum seu aeque principaliter constituantur*, ne forte quae ab eorum singulis provisa gestaque fuerint, viribus careant. Vicariorum autem generalium, quos honorarios vocant, nomen et usus prorsus aboleatur" (Martin, l. c.) [41] Supra, n. 541. [42] Craiss., n. 1156.

[43] In case several are named, all of them must reside in the episcopal city. Ferraris, l. c, n. 9.

be appointed—is the more probable opinion. 3. We said, *as a rule;* for it is certain that a bishop can constitute several vicars-general, 1, where it is customary to do so; 2, where two dioceses, having been united into one (*dioeceses principaliter unitae*), are governed by the same bishop.[44] In the latter case, the bishop *may* have a vicar-general in each diocese, nay, if the two dioceses are at a considerable distance from each other, he is *bound* to have one in the diocese where he does not reside. IV. *Mode of Appointment.*—The vicar-general may be validly constituted *orally*, and it is not absolutely necessary that his appointment should be made *in writing*. We say, *not absolutely;* because letters of appointment are required in order to prove the authority of the vicar-general, if called in question. Hence, it is advisable that he be *always* appointed by letters-patent (*scriptura publica et solemnis*)—that is, by an official instrument not merely by private letters.[45]

## § 3. *Powers of the Vicar-General.*

627. The vicar-general, by virtue of his appointment (*eo ipso quod constituatur V. G.*), can, as a rule,[46] do what the bishop himself can do *de jure ordinario.*[47] For, as was seen his jurisdiction is the same as that of the bishop; *per se,* therefore it is in every respect as great, as unlimited, and as universal as is the ordinary jurisdiction of the bishop himself.[48] We say, *per se;* that is, unless restricted, 1, by ecclesiastical law; 2, or by the bishop. Hence, in order to ascertain the extent of the powers vested in the vicar-general by his very appointment, the question is not so much what powers has he as what powers has he not. Once we have learned what restrictions have been placed on his jurisdiction, either by canon law or by the bishop, and, con-

[44] Leuren, l. c., qu. 31. [45] Ib., qu. 35. [46] Ferraris, l. c., art. ii., n. 3.
[47] Leuren., l. c., c. iii., qu. 96, 98. [48] Bouix, De Judic. Eccl., tr. i., p. 414.

sequently, what he cannot do, we know by inference what he can do—to wit: He can do generally what the bishop himself can do. Hence we ask: In what things or how far has canon law restricted the jurisdiction vested in the vicar-general by virtue of his appointment (*vi officii sibi generaliter commissi*[49])? Chiefly thus: 1, by prohibiting him from acting validly in certain cases without a special mandate from the bishop; 2, by enacting that he cannot proceed in some things even with a special mandate from the bishop. I. *Chief Cases where the Vicar-General cannot act validly save by a Special Mandate from the Bishop.*—1. The vicar-general, even though he be a bishop, cannot perform actions of the *ordo episcopalis*—*v.g.*, blessing holy oils, giving confirmation, consecrating churches or conferring orders. Nor can he grant letters dimissory for the reception of orders, except when the bishop is *in remotis regionibus* and will not return for a long time. 2. *In materia beneficiali;* he cannot confer benefices, although, according to some, he can appoint to parishes those who, having made the *concursus*, are found to be the *personae digniores.*[60] In the United States, however, according to Kenrick,[61] vicars-general (except the bishop disposes otherwise) can give priests faculties, together with the care of souls, as also revoke them for just reasons.[62] He cannot erect, unite, or divide benefices or parishes,[63] nor can he give another bishop permission to exercise *pontificalia* in the diocese. 3. In regard to the *jurisdictio contentiosa*, he cannot take cognizance of the graver causes or crimes of ecclesiastics, and consequently he cannot depose them *ab ordine* or *a beneficio* (*v.g.*, parish). 4. Nor can he absolve from suspensions incurred *ex delicto occulto*, nor from other cases reserved to the Holy See; nor from sins reserved to the bishop *solely*,[64] either by the bishop himself or by ecclesi-

[49] Ferraris, l. c., n. 3. [60] Cfr. Craiss., n. 1162. [61] Tr. viii. n. 42.
[62] Konings, n. 1146 (2). [63] Ferraris, l. c., n. 29, 34, 28.
[64] Leuren., l. c., qu. 130, 131.

astical law[55] (*v.g.*, in the *C. Ap. Sedis* of Pope Pius IX. or in the Council of Trent, sess. xxiv., c. vi., d. R.) 5. Generally speaking, he cannot dispose of matters of a grave character (*causae arduae, res graves*).[56] 6. Nor can he do those things which fall under the bishop's jurisdiction, not *de jure communi* or *de jure ordinario*, but by virtue of the *jus speciale*. Thus, vicars-general in the United States can exercise the ordinary, but not, except by special mandate, the extraordinary, faculties of our bishops. II. *Chief Cases where the Vicar-General cannot proceed validly, even with a Special Mandate from the Bishop.*—1. The bishop cannot confer upon his vicar-general power to absolve from occult heresy. Protestants, however, who apply for admission into the Church, may be absolved by the bishop *or* his *delegatus*;[57] the reason is that, by applying for admission into the Church, their *haeresis* becomes *deducta ad forum episcopi*, and thus ceases to be occult.[58] 2. The bishop cannot empower his vicar-general (unless he be a bishop) to perform those actions for which, *jure divino*, the *ordo episcopalis* is required—*v.g.*, the conferring of major orders; neither can he, except by leave from Rome, authorize his vicar-general (who is not a bishop) to do those things for which the *ordo episcopalis* is necessary only *jure ecclesiastico*—*v.g.*, to perform the blessing of abbots and blessings in general, where the holy oils are used.[59] Bishops in the United States have power from the Holy See to authorize not only vicars-general, but also other priests, to consecrate chalices and altar-stones, to bless bells,[60] sacred vestments, to absolve from occult heresy. Moreover, the *facultates extr. D. and E.* may be delegated[61] by our bishops to two or three worthy priests *in remotioribus locis dioecesis*, as also to vicars-general

[55] Konings, n. 1146 (6). [56] Phillips, Lehrb., p. 335. [57] Supra, n. 580.

[58] Craiss., n. 1168. [59] Leuren., l. c., qu. 113.

[60] Fac. Extr. C., n. 6, 12; Fac. form. i., n. 1?

[61] "Pro aliquo tamen numero casuum urgentiorum"

in case bishops are to be absent more than a day from their residence.[62]

628.—I. To what matters does the ordinary jurisdiction of vicars-general chiefly extend without any special mandate from the bishop? We premise: The jurisdiction of vicars-general is not so extensive as that of vicars-capitular, *sede vacante* (with us, administrators); for the latter can do many things which the former cannot, save by special mandate.[63] We now answer: 1. The vicar-general has the right to concur cumulatively with all the pastors of the diocese in the administration of the sacraments and in preaching.[64] 2. He may, by virtue of his appointment, hear sacramental confessions and also give other priests faculties to do so.[65] 3. He can appoint in his stead a *delegatus* for one or several matters, but not[66] *quoad universitatem causarum.* 4. He can compel pastors to take as many assistants as are necessary for the parish. 5. He may dispense from all the proclamations of the banns.[67] II. Is the vicar-generalship an ecclesiastical dignity? By a *dignitas*, in the strict sense, is not meant every office to which precedence and jurisdiction are attached, but only an office that is *permanently* vested in a person, and to which precedence and jurisdiction are annexed. In a broad sense, a *dignitas* is an office *ad nutum revocabile*, having jurisdiction and precedence attached. As the vicar-general is removable *ad nutum episcopi*, he is an ecclesiastical dignitary only in a broad sense.[68] Vicars-general are also accounted by some *praelati minores.*

629. How does the vicar-general's jurisdiction expire? Chiefly in three ways:[69] I. *By will of the bishop*—namely, by his removing the vicar-general. A vicar-general being *re-*

[62] Fac. Extr. D., n. 8; Fac. Extr. E., n. 4, ap. our Notes, pp. 473, 475.
[63] Leuren., l. c., qu. 97.
[64] Ib., qu 118.
[65] Ferraris, l. c., art. ii., n. 11, 12, 13.
[66] Except by special mandate (cfr. Craiss., n. 1176).
[67] Leuren., l. c., qu. 161.
[68] Bouix, l. c., p. 440.
[69] Soglia, t. ii., p. 27

*vocabilis ad nutum episcopi* may be validly removed *without cause*, but not licitly, except *ex gravi et justa causa;* and if removed without such cause, he may be reinstated by the Holy See."[70] II. *By will of the vicar-general himself*—that is, by his express or tacit resignation. He resigns tacitly by leaving the diocese with the intention of not returning. III. *By the lapse of the bishop's jurisdiction.* Now, the bishop loses jurisdiction, 1, by death. We observe, however, the vicar-general's jurisdiction expires at the bishop's death only in regard to matters delegated[71] to him under his *official title only—v.g.*, thus: "Committimus hanc causam *vicario generali Neo-Eboracensi*," . . . but not in regard to matters committed to him personally or under his *baptismal* or *family name—v.g.*, thus: "Committimus hanc causam *Jacobo Murphy*, vicario generali Neo-Eboracensi." For, respecting the latter cases, he retains jurisdiction even after the bishop's death, or after being removed from the vicar-generalship."[72] The bishop loses jurisdiction, 2, by resigning his see; 3, by being transferred to another bishopric; 4, when taken captive (namely, by pagans, heretics, and schismatics); 5, by being excommunicated, suspended, or interdicted; 6, by being deposed. In whatever manner, therefore, the bishop's jurisdiction lapses, that of the vicar-general—except, as stated, in cases delegated to him personally—also expires, and that even in regard to matters already taken in hand (*re non amplius integra*) by him."[73] Herein a vicar-general differs from a mere *delegatus;* for the latter's jurisdiction expires at the death of the *persona delegans*, only in regard to matters not yet engaged in (*re adhuc integra*), but not in respect to things already undertaken.

630.—I. By whom is the salary of the vicar-general to be paid? 1. *De jure communi*, by the bishop, out of his own

[70] Ferraris, l. c., art. iii., n. 29.

[71] Whether by the bishop or the Holy See. Craiss., n. 1181.

[72] Leuren, l. c., qu. 298.

[73] Soglia, l. c., p. 27.

income (*ex sua camera*).[74] The salary due the vicar-general at the time of the bishop's death should be paid him by the vicar-capitular out of the revenues of the vacant see. 2. In France and some other countries he is paid by the government. 3. In the United States vicars-general are usually also pastors, and do not, as a rule, receive a special salary for the discharge of their duties as vicars-general. II. When are the excesses and the ignorance of a vicar-general imputable to the bishop? 1. The bishop is not responsible for delinquencies of which his vicar-general is guilty *extra officium suum*—that is, as a private person.[75] 2. Excesses or mistakes committed by the vicar-general in his official capacity—*i.e.*, in the exercise of his authority—are to be imputed to the bishop if he appoints or retains in office a vicar-general whose bad character or ignorance *is* or *should* be known to him; nay, a bishop, in this case, is even bound to make restitution for injuries caused by unjust and uncanonical acts of his vicar-general.[76] For he is bound to appoint a virtuous as well as a learned and experienced vicar-general. III. By whom is the vicar-general punishable for his offences? His offences relate either to his private or official conduct. 1. If he commits crimes as a private person, he is punishable, like others, by his bishop, not by the metropolitan, save on appeal.[77] 2. But if he is delinquent in the discharge of his duties as vicar-general (*in officio et jurisdictione*) he is to be punished, according to some, by the metropolitan, not by his bishop;[78] according to others, by the bishop, unless the latter is an accomplice of the vicar-general.

[74] Craiss., n. 1183.
[75] Bouix, l. c., pp. 445, 448.
[76] Bouix, l. c., p. 453.
[78] Leuren., l. c., qu. 301.
[77] Leuren., l. c., qu. 300, n. 1, 2, 3.

## Art. II.

### *Of Archdeacons and Arch-Priests.*

631. As both these dignities have substantially ceased to exist, we shall but briefly refer to them. I. *Archdeacons.* 1. *Their office in former times.*—Archdeacons (*archidiaconi*) were formerly those who assisted the bishop in the exercise of his external jurisdiction and in the administration of the diocese.[79] Their power was similar to that of vicars-general at the present day, by whom they were superseded. Their jurisdiction was ordinary, and, though inferior to, was yet independent of and distinct from, that of the bishop.[80] They were not removable *ad nutum episcopi.* Down to the thirteenth century their authority steadily increased. Not unfrequently, however, they abused their power, which was, in consequence, greatly diminished by the Council of Trent.[81] 2. *Rights of Archdeacons at present.*—Their office is almost entirely abolished, being reduced to assisting the bishop at ordinations and presenting the *ordinandi.* Hence, where archdeacons still exist, they retain merely the name, not the power formerly attached to their office. Vicars-general now take their place. II. *Arch-Priests.*—1. *Their office or power in former times.*—The arch-priest (*archi-presbyter*) occupied the chief place among priests. It was his duty to assist the bishop in those things which related to the *sacra ministeria* (*i.e.*, the administration of the sacraments) and the *forum internum.* The chief difference, therefore, between arch-priests and archdeacons was this: The former had jurisdiction *in foro interno* only; the latter *in foro externo.* There were two kinds of arch-priests: namely, the *archi-presbyteri urbani*—that is, those who lived in the episcopal

[79] Soglia, t. ii., pp. 22, 23.

[80] Phillips, Lehrb., p. 329.

[81] Sess. xxiv., c. v., xii., xx., d R

city or at the cathedral; and the *archi-presbyteri rurales*—namely, those who were appointed for country districts.[62]

2. *Rights of Arch-Priests at present.*—Their powers met with the same fate as those of archdeacons. Hence, the rights formerly possessed by arch-priests are now almost everywhere extinct. The *archi-presbyteri urbani* have been superseded by the auxiliary bishops of the present day; the *archi-presbyteri rurales* by the present *vicarii foranei* or rural deans.[63]

## Art. III.

### *Rural Deans.*

632. By rural deans (*decani rurales, vicarii foranei*) we mean those pastors who are permanently deputed by the bishop to expedite matters of minor importance in certain districts of the diocese.[64] We say, *permanently;* thus, we distinguish them from those *delegati* who are delegated either for a particular case only, or but temporarily for a certain kind of matters. Rural deans are also named *vicarii foranei* because they are appointed for districts situate *extra fores*—*i.e.*, outside the city in which the bishop resides.[65] They may be chosen by the pastors of their district or *decania;*[66] this election is, of course, subject to the approval of the bishop. Their chief duties, especially in the United States, are: To take care of sick and attend to the burial of deceased priests in their district; to preside in theological conferences, settle minor disputes, and, in general, to inform the bishop once a year, or oftener, of all important ecclesiastical affairs relating to their district.[67] The jurisdiction of

[62] Devoti, lib. i., tit. iii., n. 75.

[63] Soglia, l. c., p. 23.

[64] Phillips, l. c., p. 340.

[65] Leuren., l. c., qu. 11, 12

[66] Except where custom has reserved this right to the bishop (Phillips, l. c., p. 341).

[67] Conc. Pl. Balt. II., n. 74.

rural deans is delegated; though it can scarcely be said that, at present, they have any real jurisdiction at all. It is allowed to appeal from them to the bishop, or, *sede vacante*, to the capitular vicar or administrator.[88] Finally, they are removable *ad nutum* either by the bishop or vicar-capitular.

See also the *Third Plenary Council of Baltimore* (n. 27) in regard to the appointment and duties of Rural deans in the United States.

[88] Ferraris, V. Vicar. Gen., art. iv., n. 19, 20.

# CHAPTER VIII.

## ADMINISTRATION OF VACANT DIOCESES—"DE ADMINISTRATIONE DIOECESIS, SEDE VACANTE."

633. We shall treat, 1, of the government of a diocese, *sede vacante*, as laid down by the *jus commune*, and as existing in countries where dioceses are fully organized, and where, consequently, there are chapters. 2. Next we shall discuss the manner in which vacant dioceses are governed in the United States.

### ART. I.

### *Administration of Vacant Dioceses in Countries where the "Jus Commune" obtains.*

#### § 1. *Upon whom the Government of a Diocese, "sede vacante," devolves.*

634. In how many ways may an episcopal see fall vacant? In three: *Proprie*, *quasi*, and *interpretative*.[1] I. A see falls vacant, in the proper or strict sense of the term (*sedes vacat proprie, sede proprie vacante*), 1, when the bishop dies; 2, or is transferred to another see; 3, when he resigns; 4, or is deposed; 5, or has become *notoric haereticus*. II. A see becomes quasi-vacant (*sedes quasi vacat, sede impedita*) when, by reason of some hindrance, its bishop is prevented from administering it. A diocese is said to be quasi-vacant, 1, if the bishop is made captive, or, rather, reduced to slavery by

[1] Craiss., n. 1216

pagans and schismatics.[2] Two exceptions, however, are to be admitted: (*a*) if the bishop, notwithstanding his permanent captivity or slavery, is able to communicate by letter with his chapter; (*b*) if he has left a vicar-general in the diocese. We said, *by pagans and schismatics;* for if a bishop is imprisoned or banished by the civil government to which he is subject, his see does not become even quasi-vacant,[3] but is to be governed during his absence by the vicar-general. In fact, to declare a see vacant whose bishop is exiled or imprisoned for defending the rights of the Church would be, as Pope Gregory XVI. wrote to the chapter of Cologne, to connive at the unjust measures of the civil power. 2. A see, moreover, becomes quasi-vacant if the bishop is far from his diocese (*in remotis*), and his vicar-general meanwhile dies or leaves the diocese, is ejected by the civil government, or is in some other way prevented from acting as vicar-general; if, however, the bishop has provided for these contingencies, the see does not fall vacant.[4] III. A see falls vacant *interpretative* when its bishop becomes excommunicated, suspended, or *inhabilis*.

[2] *V.g.*, Turks and Saracens (Craiss., n. 1217); also heretics. Cfr. Ferraris, V Capitulum, art. iii., n. 32.

[3] Thus the Holy See, in 1838, decided, in the case of Droste de Vischering Archbishop of Cologne, who had been imprisoned by the Prussian Government in 1837; as also in the case of the Neapolitan bishops driven from their sees by the Sardinian Government. See *Decretum S. C. Episc. et Regul.*, May 3, 1862, *de Nullitate Electionis Vicarii Capit. Vivente Episcopo* (ap. Phillips, Lehrb., p. 322). This decree was sent to *all* the chapters, to serve as a rule of action for the future in *all similar cases*. The *schema* of the Vatican Council, De Sed. Ep. Vac., proposes to confirm this decree in these words: Sede vero per episcopi captivitatem vel relegationem aut exilium impedita, illius regimen *penes episcopi vicarium (generalem), vel quemlibet alium virum ecclesiasticum ab episcopo delegatum remaneat*, donec aliter ab hac Sede Apostolica provideatur. Iis autem deficientibus vel impeditis, capitulares vicarium constituent, totiusque rei eventum quamprimum ad ejusdem S. Sedis notitiam deferent, recepturi humiliter, et efficaciter impleturi quod per ipsam contigerit ordinari (Martin, Docum. p 134).

[4] Leuren., l. c., qu. 447, n. 3.

635.—I. To whom belongs, *de jure communi*, the adminis tration of a diocese, *sede vacante?* 1. If a diocese is vacant in the strict sense of the term (*sede proprie vacante*), it is certain that its administration, for the whole time of the vacancy,[5] belongs *de jure communi*, not merely by privilege or delegation, to the cathedral chapter. 2. If it falls quasi-vacant (*sede quasi vacante*), it is controverted whether or not its administration devolves upon the chapter. According to some, it does in *all cases* of quasi-vacancy.[6] According to others, a distinction must be made, as follows: If a diocese becomes quasi-vacant by reason of its bishop being made a captive or slave by pagans or schismatics, the administration belongs to the chapter, though only provisionally—that is, until the Holy See, having been duly informed by the chapter, either confirms the *vicarius* appointed by the chapter or names a *vicarius apostolicus*. In all other cases of quasi-vacancy, Phillips[7] contends, the duty of the chapter consists merely in reporting without delay the state of affairs to the Holy See, by whom extraordinary provisions, if necessary, are to be made. 3. It is certain that if a see falls vacant *interpretative*, its administration does not devolve upon the chapter, but recourse must be had to the Holy See. II. Can the chapter itself—*i.e.*, in a body or collectively—administer a diocese during its vacancy? At present[8] it cannot, but is bound, within eight days after it is informed of the vacancy, to elect a vicar (*vicarius capitularis*, *vicarius capituli*), who administers the diocese in the name of the chapter. Should it neglect doing so, this duty will de-

[5] Bouix, De Capit., p. 482.

[6] Leuren., l. c., qu. 447. This opinion seems untenable at present, as is evident from the above decree of the S. C. Episc., issued in 1862 (cfr. *schema* "De Sed. Ep. Vac.," c. ii., of the *Vatican Council*).

[7] L. c., § 161; cfr. Ferraris, l. c., n. 36.

[8] Formerly it could do so (Leuren., l. c., qu. 467).

volve on the metropolitan.[9] The administration, therefore, of a vacant diocese belongs no longer, as formerly—except for the first eight days of the vacancy—to the *entire* chapter, but is to be committed to *one* person, the *vicarius capituli.* We say, *except for the first eight days;* for, during this time, the administration still belongs to the *whole chapter in solidum—i.e.*, collectively—but not to the *prima dignitas.*[10] Besides choosing a vicar-capitular for the exercise of the *jurisdictio ordinaria episcopalis—i.e.*, for the administration proper[11]—the chapter is bound to appoint one or more procurators (*oeconomus*), whose duty it is to take care of the property and revenues of the vacant diocese. In the United States no such procurators or administrators of the temporalities of vacant dioceses are appointed. Vacant sees are usually governed, with us, both *in temporalibus* and *spiritualibus*, by one and the same administrator. III. Can the chapter appoint *several* vicars-capitular? At the present day but one capitular vicar can be chosen.[12] Nevertheless, the custom, if legitimately prescribed, of electing two or more, may be tolerated. Only a competent person (*idoneus*) should be appointed vicar-capitular; he should, if possible, be a doctor in canon law, not merely in theology.[13] He cannot be appointed by the chapter, only for a limited time—*v.g.*, for three months; for, once appointed, he remains in office so long as the vacancy lasts.[14] Nor is he removable by the chapter. He should, if practicable, be selected from among the canons of the cathedral chapter. Moreover, he should be elected by the chapter when capitularly assembled;[15] secret suffrage is not essential, though advisable. A majority vote is requisite to elect the vicar; a mere plurality of votes is insufficient. He could, however, be validly elected

[9] Conc. Trid., sess. xxiv., c. xvi., d. R.

[10] Ferraris, l. c., n. 30.

[11] Phillips, l. c., p. 317.

[12] Leuren., i. c., qu. 547, n. 3.

[13] Craiss., n. 1232.

[14] Bouix, l. c., p. 510.

[15] Ferraris, l. c., n. 39.

by several canons—nay, even by one—in case the rest, *v.g.*, had died or become disqualified to vote.[16]

§ 2. *Of the Powers Vested in the Chapter or Vicar-Capitular, "Sede Vacante."*

636.—I. *Rights of Chapters and Vicars-Capitular in general.*—1. The entire government of the diocese, and the whole *jurisdictio ordinaria* of the bishop, both *in temporalibus* and *in spiritualibus*, pass to the chapter, *sede vacante*, and may be exercised by it, save in regard to matters excepted by the *jus commune* or specially withheld by the Roman Pontiff.[17] Now, this *jurisdictio ordinaria episcopalis*, as exercised by the chapter for the first eight days of the vacancy, passes entirely[18] to the vicar-capitular as soon as he is properly chosen. We say, *entirely;* for it becomes, at least as far as its exercise is concerned, vested *solely* and *exclusively* in the vicar-capitular,[19] not jointly in him and the chapter. Hence, it is not necessary that we should, as some canonists do, treat separately of the rights of the chapter and those of the vicar-capitular; for whatever is said of the one is equally applicable to the other. 2. Again, jurisdiction is divided, 1, into contentious and voluntary; 2, into jurisdiction *ex jure communi* and *ex jure speciali;* 3, into jurisdiction *ex jure* and *ex consuetudine;* 4, into ordinary and delegated; 5, into jurisdiction respecting matters that do or do not require the *ordo episcopalis.*[20] Now, the chapter or vicar-capitular, speaking in general, succeeds, 1, to the entire contentious, and probably also voluntary, jurisdiction; 2, to all those rights

[16] Craiss., n. 1248.

[17] Leuren., l. c., qu. 457.

[18] Bouix, l. c., p. 550. The *schema* of the Vatican Council, "De Sed. Ep. Vac., c. i.," also expresses this: "In vicario autem constituendo *nullam sibi jurisdictionis partem capitulum retinere quomodocunque possit*" (Martin, l. c., p. 134).

[19] He becomes, therefore, so to say, the bishop of the diocese for the time being (Phillips, l. c., p. 318).

[20] Bouix, l. c., p. 556.

which are, either by privilege or custom, permanently attached, not to the person of the bishop, but to the see; 3, to the *jurisdictio delegata* of the bishop, in those cases where the bishop is authorized by the Council of Trent to act "*etiam* tanquam Sedis Apostolicae delegatus," but not where he acts simply *tanquam*, etc.; 4, finally, neither chapters nor vicars-capitular can perform acts of the *ordo episcopalis*—*i.e.*, functions for which the *ordo episcopalis* is required—although they may authorize or invite other bishops to do so in the vacant diocese.

637.—II. *Rights of Chapters and Vicars-Capitular in particular.*—I. Vicars-capitular can, 1, enact statutes for the entire diocese and enforce them by penalties;[21] 2, inflict all the censures which the deceased bishop could inflict;[22] hence, they can excommunicate, suspend *ab officio* and *a beneficio;* 3, absolve from all censures from which the bishop himself could absolve;[23] hence, they can absolve from excommunications, whether imposed *a jure* (provided they are not reserved to the Holy See)—*v.g.*, for striking an ecclesiastic—or *ab homine*—*v.g.*, by the deceased bishop or his vicar-general; 4, as a matter of course, they can absolve from censures inflicted by themselves or by chapters; 5, they can absolve *in foro conscientiae* from all occult cases reserved *simpliciter* to the Holy See—nay, from all censures whatever in the case of those who cannot recur to the Holy See for absolution;[24] 6, they can also absolve from all cases reserved to the bishop; 7, and give faculties to hear confessions.[25] II. What are the chief things the chapter or vicar-capitular cannot do, *sede vacante?* It is a general rule that, *sede vacante*, no innovations should be made which would in any way be prejudicial to the rights of the future bishop.[26] In fact, the very nature of an interregnum demands that those who

[21] Leuren., l. c., qu. 470. [22] Ib., qu. 475. [23] Ib., qu. 476.
[24] Ib., qu. 476, 477. [25] Ib., qu. 483. [26] Phillips, l c., p. 319.

govern during the vacancy should make no innovations whatever, but merely expedite such matters as do not admit of delay. Hence, vicars-capitular, 1, cannot appoint to vacant parishes,[27] though they can hold the *concursus*, select the *persona dignior* and present him to the Pope, to whom alone the appointment belongs during the vacancy of the see;[28] 2, nor can they, during the first year of the vacancy, give *litteras dimissorias ad ordines* (*i.e.*, letters dimissory enabling ecclesiastics to receive orders from bishops of other dioceses), except to ecclesiastics who are obliged[29] to receive orders (*clericis arctatis*). When the see has been vacant one year, letters dimissory may be given to *all* ecclesiastics.[30] 3. They may, however, according to the more common opinion, give *exeats* (*litterae excorporationis*) at any time during the vacancy, provided there be a *causa gravis*.[31]

[27] The *schema*, above quoted (c. ii.), of the *Vatican Council* proposed: "Cum experientia doceat, quosdam vicarii munus adeptos ambitiosa sollicitudine multa properanter disponere, futuri episcopi consilia ac regimen praeoccupantes, quandoque etiam hujus Ap. Sedis jura invadentes, nos, sacro approbante concilio, vicarii cap. facultates, intra sacrorum canonum limites omnino contineri jubemus. Quapropter invectam quibusdam in locis consuetudinem ut *liberae collationis beneficia a vicario conferantur, tolerandam haud esse declaramus*. Quod si beneficia hujusmodi animarum curam adnexam habeant, vicarii erit, deputato statim oeconomo, concursum indicere, et illius acta ad hanc Apost. Sedem transmittere, ad quam collatio seu provisio pertinet, nisi aliter ab eadem pro locorum, temporum, ac personarum adjunctis provisum fuerit" (Martin, l. c.)

[28] Leuren., l. c., qu. 529, 530.

[29] Namely, on account of a benefice or parish to which they have been or are to be appointed (Soglia, l. c., p. 38).

[30] The above *schema* of the *Vatican Council* proposed that this should be done only with the consent of the chapter. It says: "In dimissoriis ad ordines a vicario post annum vacationis concedendis *capituli semper consensus per secreta suffragia requiratur et accedat; iis vero qui a proprio episcopo rejecti fuerint nunquam concedantur*" (Martin, l. c.)

[31] Craiss., n. 1270. The above *schema* of the *Vatican Council* proposed to revoke this right. It says: "Alienum clericum clero dioecesis adscribere, vel proprium ex eo dimittere vicarius nequeat, nisi ab hac Sede Apost. facultatem obtinuerit" (Martin, l. c.)

Vicars-capitular are entitled to a competent salary for their services as vicars-capitular, even though they have an income from other sources—*v.g.*, from canonships. This salary may be made up, *v.g.*, from chancery fees (*ex sigillo*) and, in general, from all revenues, no matter of what kind, which would belong to the bishop if the see were not vacant.[33] If not paid by the chapter, it must be paid by the bishop-elect out of the episcopal income which accrued during the vacancy. At the present day the jurisdiction of vicars-capitular lapses as soon as the bishop-elect has exhibited the bulls of his appointmen [34]

## ART. II.

### *Administration of Vacant Dioceses in the United States.*

☞ 638.—I. *Appointment of Administrators in the United States.*—The *Third Plenary Council of Baltimore*, though it has changed the mode of electing our bishops, has not modified the manner of appointing the administrator, as laid down by the Second Plenary Council of Baltimore. Hence the following is the mode of appointing administrators: 1. If the vacancy is caused by the death of the bishop, the administrator may be appointed by the bishop

[33] Leuren., l. c., qu. 613, 614, 615.

[34] In regard to the exhibition of the Papal letters of his appointment by the bishop-elect, Pope Pius IX. (*C. Ap. Sedis*, 1869) enacted : "Suspensionem ipso facto incurrunt a suorum beneficiorum perceptione, ad beneplacitum S. Sedis, capitula et conventus ecclesiarum et monasteriorum, aliique omnes qui ad illarum seu illorum regimen et administrationem recipiunt episcopos aliosve praelatos de praedictis ecclesiis seu monasteriis apud eandem S. Sedem quovis modo provisos, *antequam ipsi exhibuerint litteras apostolicas de sua promotione*." Pope Pius IX. also renewed (*C. Rom. Pontifex*, 1873) the *jus commune* forbidding those who are nominated or presented for bishoprics to administer such dioceses, even as vicars-capitular or administrators, *before they have exhibited the bulls of their appointment*. The *schema* D. Ep. S. Vac. of the *Vatican Council* proposed to confirm the same, adding that, if the one who was vicar-capitular at the time happened to be nominated or presented, he should, *eo ipso*, on being informed of this, cease to administer the diocese for which he was nominated (Phillips, Comp., § 160, note 12, ed. Vering, Ratisb., 1875).

himself before his death.[34] Should this have been omitted, the metropolitan,[35] or, in case of his not doing so, the senior suffragan, will designate the administrator.[36] The senior suffragan also appoints the administrator of a vacant metropolitan see, if no priest was appointed by the archbishop before his demise. 2. If a see becomes vacant in any other manner than by the death of its bishop—*v.g.*, by his resignation, translation, etc.—then the metropolitan, or, in his default, as also when the metropolitan see itself falls thus vacant, the senior suffragan, will designate a competent ecclesiastic to govern the diocese *ad interim.* 3. In all these cases the appointment is merely provisional, the Holy See having reserved the right of either confirming or altering it.

[34] Conc. Pl. Balt. II., n. 96. [35] Ib., n. 97.

[36] The third chapter of the above *schema* of the *Vatican Council* proposes to renew, in regard to the administration of dioceses falling vacant by the death of the bishop in countries situate far from Europe, the regulations of Benedict XIV., Const. Quam ex Sublimi, August 8, 1755. The *schema* says: Attendentes imprimis in remotis ejusmodi regionibus aliquos archiepiscopos et episcopos locorum ordinarios et residentiales capitulum canonicorum habere, alios vero eo esse destitutos, mandamus ut, eveniente cujuslibet antistitis obitu, statim procedatur ad electionem vicarii capitularis juxta morem, usum, et consuetudinem hactenus legitime servatam; nimirum, 1, ubi capitulum existit, vel a canonicis duntaxat, si ita in more jam sit positum, vel a canonicis una cum aliis ecclesiasticis viris, quos in casibus hujusmodi semper intervenisse et suffragium suum in ea electione tulisse constat. 2. Ubi autem capitulum canonicorum non habetur, ibi parochi, sive soli, sive cum aliis ecclesiasticis viris juxta modum itidem, usum et consuetudinem de praeterito servatam, ad vicarii capitularis electionem habendam accedant In ceteris omnibus autem servari mandamus Trid. C. de vicarii cap. electione constitutiones. 3. In iis vero locis in quibus antistites ordinarii eorundem locorum residentiales neque capitulum canonicorum, neque parochos in suis civitatibus et dioecesibus habent, sed duntaxat sacerdotes aliquot et missionarios per terras et oppida dispersos, ita ut, antistite decedente, una simul convenire haud valeant, vicarius generalis jam a defuncto antistite constitutus, licet doctoris gradu in jure canonico auctus non sit, ipso facto intelligatur et habeatur tanquam vicarius capitularis cum omnibus facultatibus de jure ad ejusmodi munus spectantibus, illudque exerceat quousque novus antistes ab Ap. hac Sede designatus illuc advenerit, ac susceperit, vel aliter ab eadem fuerit ordi-

II. *Powers of Administrators in the United States.*—1. The *facultates* of our bishops contained in the *form. I.*, excepting those which require the *ordo episcopalis* or the use of the holy oils,[37] can be conferred upon administrators by the bishop, or, as the case may be, by the archbishop or senior suffragan. 2. As to the other *facultates*, the Second Plenary Council of Baltimore[38] requested the Holy See, "ut episcopus, aut, prout casus feret, metropolita vel senior episcopus possit presbytero sedis vacantis administratori tribuere *eas omnes facultates tam ordinarias quam extra-ordinarias, quibus gaudent episcopi ex Sanctae Sedis concessione.*" No answer was returned by Rome. The same request was afterward renewed by the Tenth Provincial Council of Baltimore (an. 1869), and was provisionally granted by the Holy See in these words: "Sanctitas sua, licet ea super re nil pro nunc decernendum expresserit, voluit tamen, ut si quam interim

natum. 4. Omnibus autem vicariis apostolicis, sive titulo et dignitate episcopali praeditis, sive sacerdotali tantum charactere insignitis, sed neque coadjutorem cum futura successione neque vicarium generalem habentibus praecipimus, ut unusquisque eorum teneatur deputare vicarium ex clero sive saeculari sive regulari, habilem tamen atque idoneum. Is vero post vicarii apostolici obitum tamquam hujus S. Sedis delegatus assumet regimen vicariatus, et in ejusmodi munere permanebit, donec novus Ap. vicarius ab eadem S. Sede designatus ipsius vicariatus possessionem et regimen adierit, vel usque ad quamcunque aliam ab ipsa ineundam ordinationem ; idemque pariter alterum statim deputabit ecclesiasticum virum, qui ei, si forte interim obierit, in munere succedere debeat. Volumus autem pro-vicarios hujusmodi, non solum iis omnibus et singulis uti posse facultatibus, quae cujusvis ecclesiae cathedralis vicario capitulari de jure competere dignoscuntur, verum etiam iisdem frui facultatibus, quibus defunctus vicarius apostolicus pollebat, iis duntaxat exceptis, quae requirunt characterem episcopalem, vel non sine sacrorum oleorum usu exercentur; eidem tamen potestatem facimus ut quandocunque necessitas urgeat, possit consecrare calices, patenas, et altaria portabilia, cum sacris oleis ab Episcopo benedictis (Martin, l. c., pp. 135, 136; cfr. Ferraris, V. Vicar. Cap., art. ii, n. 101).

[37] Fac., form. i., n. 28; C. Pl. B. II., n. 97. [38] N. 98.

ex tuae provinciae[39] dioecesibus vacare contigerit, administrator, sede vacante, donetur facultatibus extraordinariis contentis sub formulis C. D. E , exceptis iis, quae characterem episcopalem requirunt."[40]

*Q.* How are administrators or vicars-capitular appointed in other missionary countries?

*A.* We premise: All vicars-apostolic of missionary countries, whether they be simple priests or bishops, but without coadjutors *cum successione*, must appoint vicars-general. We now answer:

1. The general rule is that upon the death of the vicar-apostolic (whether he be a bishop or merely a priest) his vicar-general becomes *ipso facto*, by Pontifical authority, vicar-capitular, and retains this office until a new vicar-apostolic has been appointed by the Holy See and taken possession of the vicariate.

2. In missionary countries where there are ordinary bishops, vicars-capitular, where such has been the custom, should be elected immediately upon the death of the bishop by chapters, if any, or by the parish priests. And where there are no chapters, and the parish priests are too few or too much scattered to meet for an election, the vicar-general of the deceased bishop becomes *ipso facto* the vicar-capitular.[41]

In Ireland and England vicars-capitular are elected by chapters within eight days after the see becomes vacant.

[39] Hence, this concession was given for the province of Baltimore only, not for the whole United States. As the province of Baltimore, at the time this concession was granted, namely, in 1869, comprised the present province of Philadelphia, it follows that this rescript extends to all the dioceses now comprising the province of Philadelphia, which was erected into an archdiocese and separate province in 1875. (Cf. Konings, fac. n. 115.)

[40] Ap. Coll. Lac., tom. iii., p. 599; cfr. ib., pp. 577, 584, 585, 596, 599.

[41] Bened. XIV., C. *Quam ex Sublimi*, Aug. 8, 1755; Coll Lac., iii., p. 1114.

# CHAPTER IX.

## OF PARISH PRIESTS—THEIR RIGHTS AND DUTIES.

### ART. I.

### *Nature of the Office of Parish Priests as at present understood—Mode of Appointment, etc.*

#### § 1. *Errors respecting the institution of Parish Priests.*

639. Gerson, chancellor of the Sorbonne, was the first who, in the beginning of the fifteenth century, maintained that parish priests were instituted by Christ himself.[1] This is erroneous; for, 1, in the first three centuries of the Church there were no parishes or parish priests in any part of the world. There was, in fact, but one church in the principal city of the diocese—*i.e.*, in the city where the bishop resided. To this church all the faithful, not merely of the city itself, but also of the neighboring villages, went on Sundays to assist at Mass and receive the sacraments.[2] To the absent holy communion was brought by the deacons. When the faithful became more numerous, other churches were indeed built, even in the episcopal city; but services were performed there by priests from the cathedral, not by parish priests—*i.e.*, not by priests *permanently appointed* (*per modum stabilis officii*) to exercise the *cura animarum* over determinate congregations.[3] Hence, there was but one parish in each diocese—namely, the cathedral. The bishop was, so to say, the parish priest of, and exercised the *cura* through-

[1] Bouix, De Paroch., p. 82. Paris, 1867. [2] Devoti, l. i., tit. iii., n. 87, 88.
[3] Bouix, l. c., pp. 13, 22.

out, the whole diocese either personally or, when impeded, through his priests.[4] 2. It was only after the third century that parishes came to be established, and that, at first, in rural districts only,[5] and, later on (*i.e.*, after the year 1000), also in cities.[6] 3. Hence, parish priests are merely of ecclesiastical, not of divine, institution. Nor is the contrary provable from Sacred Scripture. For the word *presbyteri*, as mentioned in the texts quoted by our opponents, does not necessarily refer to parish priests, since, in the first ages, bishops were also called *presbyteri.*[7]

## § 2. *Correct View of the Nature of the Office of Parish Priests—Irremovability—Status of Pastors in the United States.*

640. We shall here show, 1, what are the chief errors on this head; 2, what is essentially required to constitute a parish priest in the canonical sense of the term. *Chief Erroneous Systems respecting the Rights of Parish Priests.*—I. *Presbyterianism proper*, so called because it makes priests (presbyters) the equals of bishops, and asserts that bishops have, *jure divino*, no powers that are not equally possessed by priests. This heretical system, broached by Aërius in the fourth century, was renewed by Wiclef, Huss, Luther, Calvin, etc. II. Again, there are those who do not—at least openly—deny that bishops are, *jure divino*, superior to priests, but who attribute to parish priests many undue parochial rights. They are styled *parochistae*, and their system *parochismus.*[8] Now, the principal errors of the *parochistae* are: 1. Those of Richer, whose tenets may be summed up thus:[9] The Holy See can exercise no act of jurisdiction in the dioceses of bishops without the consent

[4] Ferraris, V. Parochia., n. 7.

[5] That is, in villages whose inhabitants could not conveniently go to the church in the episcopal city. [6] Supra, n. 243. [7] Craiss., n. 1295.

[8] Not improperly also *Presbyterianismus* (Bouix, l. c., p 80).

[9] Salz., t. ii., p. 188.

of the bishops themselves; bishops, in turn, cannot interfere in the management of parishes, except by consent of the parish priests. That these assertions are utterly false is provable from their logical consequences. For if it were true that bishops and Popes have but *jurisdictio mediata*, not *immediata*, over the faithful, it would follow that, except in case of necessity, no bishop—nay, not even the Pope himself—could anywhere, either personally or through others, perform any sacred function, such as preaching, hearing confessions, without the consent of parish priests—which is manifestly erroneous and absurd.[10] 2. Those of Gerson and others, who maintain that parish priests have, by virtue of their office, power to excommunicate, and, in general, jurisdiction *in foro externo;* that they are *judices fidei*, and have a definitive vote in councils. We shall not attempt here to confute these errors in detail. Suffice it to say[11] that parish priests do not at present, and probably never did, possess any jurisdiction *in foro externo;*[12] cannot excommunicate by virtue of their office, and have no decisive voice in councils.

641. ***What is meant by a Parish Priest in the canonical sense of the term.—Definition.***—A parish priest (*parochus, rector, curatus*) is a person lawfully and *irremovably* (n. 259) appointed to exercise, in his own name and *ex obligatione*, the *cura animarum*—that is, to preach the word of God and administer the sacraments to a determinate number of the faithful of a diocese, who in turn are, in a measure, bound to receive the sacraments from him.[13] As this definition includes all the conditions essentially requisite to constitute a parish priest, in the canonical sense of the term, we shall briefly explain

[10] Craiss., n. 1292.

[11] Cfr. Bouix, l. c., pp. 120, 132, 142.

[12] Hence, they are not even *praelati minores*, nor *dignitates;* nor can they be called *pastors* (*pastores*) in the strict sense; though, at present, they are not unfrequently called *pastors*—namely, of the second order, and in a broad sense (Craiss., n. 1305

[13] Bouix, l. c., p. 175.

its terms: 1. We say, the *cura animarum;* now, this *cura* consists chiefly in the preaching of the word of God and the administration of the sacraments.[14] As the administration of the sacraments necessarily includes the power to impart sacramental absolution, it is evident that one who is appointed parish priest has, *eo ipso*, jurisdiction *in foro poenitentiali*, and may, if he is a priest, hear confessions without any further approbation. 2. We say, *in his own name* (*nomine proprio, jure proprio*); that is, by virtue of his office, and not merely as the vicar or in the name of another—*v.g.*, the bishop.[15] Hence, assistant priests, though they exercise the *cura*, are not on that account parish priests; for they exercise the *cura* merely *for*, or *in the stead of*, others—namely, pastors. Parish priests, therefore, are vested with *jurisdictio ordinaria*, not merely *delegata;* once appointed, they, like vicars-general, have, in a measure, jurisdiction *a lege ecclesiastica.* 3. We say, *and ex obligatione;* that is, the parish priest is *obliged* to administer the sacraments to the faithful under his charge.[16] 4. We say, *to a determinate number*, etc.; hence, parishes must in all cases have accurately-defined limits. Therefore, where there are distinct parishes and parish priests proper (*parochi in titulum—i.e., in beneficium perpetuum*), the bishop,[17] though having pre-eminently the *cura animarum* throughout the diocese, is not, strictly speaking, the parish priest of the whole diocese.[18] In places, however, where there are no separate parishes and no parish priests, in the canonical sense of the term—as was formerly the case nearly all over Spain, and those places referred to by the C. of Trent (sess. xxiv., c. xiii., d. R.)—the whole diocese is considered but one parish, of which the bishop is the rector or universal parish

[14] Bouix, l. c., p. 171; cfr. Ferraris, l. c., n. 18.

[15] Leuren., For. Ben., p. i., qu 146.

[16] Ib., qu. 146.

[17] He is, however, the parish priest proper of his cathedral (ib., qu. 143).

[18] Even in this case *episcopus jus habet, ut se ingerere possit in cura cujuslibet parochiae, et in ea pro libitu se occupare* (Ib.)

priest.[19] 5. We say, *who in turn are, in a measure, bound,* etc.; hence, a pastor whose parishioners are *altogether free* to receive the sacraments outside of their own parish is not, canonically speaking, a parish priest.[20] For the Council of Trent (sess. xxiv., c. xiii., De Ref.) "enjoins on bishops that, having divided the people into fixed and proper parishes, they shall assign to each parish its own perpetual (*i.e.*, irremovable) parish priest, who may know his parishioners, *and from whom alone they may licitly receive the sacraments.*" Parishes, as a rule, are distinguished from each other, and the number of people belonging to each parish is usually determined, by *territorial* circumscription or boundaries.[21] We say, *as a rule;* for it is not repugnant to canon law that a parish, in the canonical sense of the word, should consist of certain families, even though living in the districts of other parishes.[22] In the United States German congregations are usually established in this manner—that is, they are made up of the German Catholics of a place, no matter whether they live in the confines of English-speaking congregations.

642.—I. *How many kinds of "cura animarum" are there?* These: 1. The *cura plena* and *partialis.* The *cura plena* is that which includes jurisdiction *in foro externo* and the *potestas judicialis;* the Sovereign Pontiff exercises it all over the world; bishops in their respective dioceses. The *cura partialis* is that which is restricted to matters pertaining to the *forum internum.*[24] 2. The *cura habitualis* and *actualis.* A person is said to have the *cura habitualis* when he neither does nor can, *de facto,* exercise it, though he can and should see that it is exercised by another person. On the other hand, a person who, *de facto,* has the right to exercise the *cura* is said to have the *cura actualis.* Thus, a cathedral

[19] Bouix, l. c., p. 173. [20] Leuren., l. c., qu. 146.
[22] Ib., qu. 160; Bouix, l. c., p. 269. [21] Ferraris, l. c., n. 17.
[24] Bouix, l. c., p. 178.

chapter to which the *cura* is attached has the *cura habitualis* only—is *parochus habitu*—while the vicar appointed by it to exercise the *cura* has the *cura actualis*, and is, properly speaking, the *parochus*. II. *What "cura" is essential to the office of parish priest?* The *cura partialis*. We observe, when we speak simply of the *cura animarum*, we mean the *cura* as exercised by parish priests—*i.e.*, the *cura partialis*. 2. The *cura habitualis* is not sufficient. A *parochus habitu*, therefore, is not, strictly speaking, a parish priest. The *cura actualis*, however, is sufficient, even without the *cura habitualis*. Thus, the parochial vicar (*vicarius capituli curatus*) appointed by a chapter having the *cura habitualis* is a true parish priest. In the United States no *cura habitualis* is vested in any person or ecclesiastical corporation. III. *Can there be several parish priests in one and the same parish?* 1. The question is controverted. The negative[25] holds that a parish priest is essentially one who exercises the *cura solely* and *exclusively*[26] in his parish, so that if two or more were placed in charge of the same parish none of them would be parish priest. 2. It is admitted by all that, as a rule, it is more expedient that but one parish priest should be placed over a parish. 3. Congregations in the United States should be governed each by one priest only as pastor, not by several *ex aequo*.[27]

☞ 643. *Q.* Is the *amovibilitas* of rectors contrary to the general law of the Church? In other words, does the general law of the Church, as still in force, forbid the care of souls to be exercised by rectors who are *amovibiles?*

*A.* We premise: In our question we say the *general law;* for, as we have already shown above (n. 417), the Church sometimes and exceptionally allows, by *special law*, *v.g.*, by

[25] It is the *sententia multo communior* (Bouix, l. c., p. 182).

[26] We prescind, of course, from the bishop's rights.

[27] Conc. Pl. Balt. II., n. 111.

apostolic dispensation, the care of souls to be exercised by rectors who are removable.

We now answer: The law of the Church, as still in full force, is that the care of souls shall be exercised by rectors who are irremovable. In other words, as the Secretary of the S. C. C., in the cause *Portuen. et S. Ruf.*, 14th February, 1846, says, the Church not only *exhorts*, but *commands* that rectors and all others having the "cura animarum" *shall be irremovable.* This law of the Church, already clearly laid down by Pope Innocent III. in the General Council of the Lateran (1216),[28] and by Pope Boniface VIII.[29] († 1303), was renewed and strictly inculcated by the Council of Trent,[30] especially in session xxiv., chap. 13, De Ref., where it "*enjoins* on bishops, that for the greater security of the salvation of souls, . . . they shall assign to each parish its own *perpetual* parish priest, who may know his own parishioners." Accordingly, as the above Secretary continues, it has been the unvarying custom of the Sacred Congregation of the Council, which is the authentic expounder and interpreter of the true meaning of the Council of Trent, always to declare that rectors appointed to exercise the care of souls shall invariably, and notwithstanding any custom to the contrary, be *inamovibiles* and not *amovibiles.*[31] Consequently, writes the Secretary, it is also the constant practice of the S. C. C. most earnestly to exhort bishops in whose dioceses there are *paroeciae* or *missiones amovibiles* to change these parishes or missions into *parochiae perpetuae* or *inamovibiles*, that is, into parishes whose rectors are irremovable.[32]

644. This law is in harmony with the very nature of the

[28] Cap. Extirpandae 30, § vero, de praeb. (iii., 5).

[29] Cap. Unic. de Capell. Mon. in 6° (III. 18).

[30] Sess. vii., cap. vii., De Ref.; sess. xxiv., cap. xiii., De Ref.

[31] Cf. S. C. C. in Baren. Cura Anim. Aug. 29, 1857; Lucidi, De Visit. SS. LL., vol. iii., p. 243 sq.

[32] Lingen et Reus, Causae selectae S. C. C., p. 826.

office and of the duties of one charged with the care of souls. For these duties consist principally in preaching the word of God and administering the sacraments to the parishioners, and in attending to all their spiritual wants. Hence the pastor is the *father* and the *shepherd* of his flock. The souls of the parishioners are entrusted to his keeping. It is his duty to watch constantly over the faithful committed to his care. Now, no one will deny that while these duties can, absolutely speaking, be discharged sufficiently well by a rector who is removable, and who is therefore not looked upon, by the law, as a shepherd in the true sense, yet they will be discharged *better* and *with greater profit to souls*, by a rector who is irremovable, and who is consequently regarded as the *spouse*, the *shepherd* and the *spiritual father* of the flock, to whom he is wedded by a spiritual wedlock stronger than the carnal. These reasons are clearly recognized by the Council of Trent (sess. xxiv., c. 13, De Ref.), where it commands bishops to appoint irremovable rectors over churches, *for the greater security of the salvation of souls*, and that the rector *may know his own parishioners*.

The general opinion of canonists confirms the above teaching. For nearly all of them, with an odd exception here and there, teach that the law of the Church requires rectors or parish priests to be irremovable;[33] that consequently irremovability is one of the requisite prerogatives of a true parish priest; and that therefore rectors who are removable are not canonical parish priests in the true sense of the term.[34]

If, therefore, irremovability is prescribed by the general law, it follows clearly that removability is opposed to this general law. In other words, the general law prescribes that the care of souls shall be exercised by rectors

[33] Lucidi, de Visit. SS. LL., vol. i., p. 396, n. 292.

[34] See our Counter-Points, p. 70 sq., where we give the words of Leurenius, Soglia, Ferraris, and others.

who are irremovable; therefore it forbids that this care of souls shall be exercised by removable rectors. However, as we have seen, by *special law, v.g.*, by papal dispensation, the Church sometimes derogates from this general law, and tolerates removability for exceptional reasons.

While therefore we agree with Bouix,[35] that the irremovability of rectors is not absolutely required by the nature of the duties incumbent upon a pastor, we differ from him when he teaches that the general law is not opposed to the care of souls being exercised by rectors removable at the will of the bishop.[36] This view is, as we have seen, directly opposed to the clear letter of the law and to the general teaching of canonists. In fact, in advocating it, Bouix stands almost alone among canonists. But let us briefly state and answer his arguments.

He contends that removability at the will of the bishop is not contrary (*a*) to the early discipline of the Church (*b*), nor to the general law as it stood prior to the Council of Trent (*c*), nor to the latter council. We have already seen that the Council of Trent is opposed to the removability in question. As to the general law of the Church prior to the Council of Trent, we have also shown that Popes Innocent III. and Boniface VIII. clearly enact that the rectors of souls shall be irremovable. Thus Pope Boniface VIII. (1298) decrees: "Presbyteri, qui ad curam populi . . praesentantur episcopis, *cum debeant esse perpetui*, consuetudine vel statuto quovis contrario non obstante, ab eisdem nequeunt ecclesiis . . . amoveri."[37] It only remains, therefore, to examine the early discipline of the Church. Now the history of the early ages of the Church will show that the assertion of Bouix is incorrect. For, as Avanzini shows in the *Acta S. Sedis*, vol. iii., p. 506 sq., it is well known that in the first

[35] De Paroch., p. 193 sq.
[36] Ib., p. 201 sq.
[37] Cap. un. de Cap. Mon. in 6 (iii., 18).

ages of the Church, when the number of the faithful had increased, various offices and grades of dignity were established and conferred upon ecclesiastics. These offices or positions were most closely interlinked with the ordination itself, so that, as we say above (n. 584), no person was promoted to any *ordo*, whether major or minor, without being at the same time *perpetually* or *irremovably* attached to some church or pious place,[38] where he exercised *permanently* the duties of whatever *ordo* he had received.[39] Hence those who were removed from their *office* or *charge* were not unfrequently said to be also deprived of the *priesthood*. Likewise their ordination was often called invalid which was not accompanied by an appointment to an ecclesiastical office or position.[40]

☞ 645. This discipline prevailed at a time when ecclesiastical *offices* were known, but when as yet *benefices* were entirely unknown. For benefices, especially parochial, were not at least universally established until after the year 1000 (supra, n. 639). In fact, in the early ages of the Church the offerings of the faithful and the income of all the churches of the whole diocese were put into a common fund, which was under the control of the bishop, and divided into four portions: one for the bishop; another for the ecclesiastics of the diocese, each one receiving a share proportionate to his office or grade; the third, for the poor and strangers; the fourth, for the maintenance and repairs of the churches.[41] The fund was distributed by priests or deacons.

In the course of time, each church was allowed to retain and administer its own income for its own wants, and thus benefices were established. For a benefice, objectively

[38] Thus Pope Urban II. in the Can. Sanctorum 2, dist. 70, says: "In qua ecclesia quilibet titulatus est, *in ea perpetuo perseveret*."

[39] Cf. Acta S. Sedis, vol. iii., p. 508.

[40] Can. 6, Conc. Chalced., cf. Can. 1, 2, 3, 4, dist. 76.

[41] Const. of Pope Gelasius, Causa 12, q. 2, Can. *Vobis* 23.

speaking, is nothing else than the revenues attached to a determinate ecclesiastical office. Now, as the incumbent was appointed *permanently* to the office or church, so also did he receive, as soon as the common fund disappeared, and the revenues of his office or church remained with the latter, the perpetual right to administer and receive the revenues or income of his church.[a] From this it will be seen that irremovability does not owe its origin to the establishment of benefices; that it existed before as well as after they were introduced. Benefices merely added to the incumbent's right to hold the *office* permanently, the right to administer and receive its *income* permanently. Hence the *amovibilitas* of rectors is opposed to the early discipline of the Church.

☞ From the above it will be seen that a church may be a canonical parish and have a canonical parish priest, even though it is not a benefice. It should indeed have a sufficient revenue. But it matters not whether this income is derived from pew-rents, collections, etc., as in the U. S., or from real estate. Hence, on this score, there is no obstacle in the way of our missions becoming canonical parishes.[b]

§ 3. *On the Canonical Formation and Suppression of Parishes.*

646. We sufficiently described the formation of parishes when we spoke of the erection of benefices or parishes. We shall here subjoin only a few words, 1, on the formation of parishes *cum jure patronatus;* 2, on the alteration and suppression of parishes in general. I. *Formation of Parishes "cum jure patronatus."*—The *jus patronatus* consists chiefly in

[a] Acta S. Sedis, vol. iii. p. 510.

[b] In the conferences held at Rome in 1883 between the Cardinals of the S. C. de P. F. and the American Prelates, the Cardinals proposed to establish in the United States canonical parishes proper, whose rectors should be canonical parish priests proper, possessed of irremovability, ordinary jurisdiction, and all the other rights and duties of canonical parish priests. To this our Prelates objected. The matter was finally compromised and decided by the Cardinals as follows: "Utrum in America debeant constitui veri parochi in sensu canonico vel tantum rectores inamovibiles sicut in Anglia cum sola dote inamovibilitatis et absque juribus ac privilegiis verorum Parochorum? Emi dixerunt, propositam quaestionem esse definiendam ita: Pro nunc esse constituendos rectores inamovibiles sicut in Anglia."

this: that when a benefice or parish becomes vacant, the *patronus* can present the new rector to the bishop for appointment.[42] The rector thus presented acquires a *jus ad rem*, and must be appointed to the vacant place, unless some canonical obstacle stands in the way.[43] *How is the "jus patronatus" acquired?* 1. *Extraordinarily* (*de jure singulari*) by prescription, custom, and privilege. 2. *Ordinarily* (*de jure communi*) a person acquires the *jus patronatus* in three ways: 1, by giving the land upon which the church is to be built (*fundatione, concessione fundi*); 2, by defraying the expenses of the building of the church (*aedificatione, constructione*); 3, by endowing the church (*dotatione*). It is sufficient for a person to perform *one* of these three things, and it is not necessary for him to perform *all three*.[44] Thus, a person acquires the *jus patronatus*, 1, by donating the ground (though only after the church has been built upon it and endowed);[45] 2, *or* by building a church at his own expense; 3, *or* by endowing it.[46] The endowment must be sufficient—*i.e.*, sufficient revenues must be assigned the church for the support of the clergymen, for the maintenance of divine worship, for candles, and the like. No *jus patronatus* arises from an insufficient endowment. Moreover, simple donations, legacies, or contributions do not confer the *jus patronatus*, even though they constitute a *dos sufficiens*.[47] A person, therefore, not assigning an endowment proper, but merely contributing, even though generously, to a church, does not become an endower (*dotator*), but merely a benefactor (*benefactor*). Hence, as Kenrick[48] says, no *jus patronatus* exists in the United

[42] Craiss., n. 1322. A *postulatum*, made by a number of German bishops at the *Vatican Council*, proposed to restrict the right of presentation, so that lay patrons should be obliged to present one of three persons to be designated by the ordinary (Martin, l. c., p. 172).

[43] Supra, n. 320.

[44] Leuren., l. c, p. ii., qu. 30.

[45] Ib., qu. 39.

[46] Ferraris, V. Jus Patronatus, art. i., n. 20, 26.

[47] Leuren. l. c., qu. 48

[48] Tr. 12, n. 96; cfr. Conc. Pl. Balt. II., n. 184.

States, because our churches are maintained simply by contributions from the faithful. From what has been said, it follows that the same church may have several *patroni—v.g.*, if one gives the land, another builds the church, and a third endows it; in this case all three are *patroni in solidum—i.e.*, have equal rights, each having a vote in the nomination of the pastor.[49] Again, if a number of persons concur in performing one of the three above actions—*i.e.*, if they together *either* buy the land, etc.—all of them become *patroni*.[50] The consent of the ordinary is indispensable for the acquisition of the *jus patronatus;* it need not, however, be necessarily given *before* or *during* the building of the church. Thus, if a church were built without the consent of the bishop, but afterwards accepted by him, this acceptance would be sufficient consent.[51] We need not here say that the *jus patronatus* does not mean the right to actually *appoint* the pastor, but merely to *present* him for appointment. Finally, we observe, the Church has instituted the *jus patronatus* in order to encourage the faithful to build and generously endow churches. II. *Alteration and Suppression of Parishes in general.*—The bishop may, by virtue of his *potestas ordinaria*,[52] change a church not having the care of souls annexed (*ecclesia simplex*) into one with the care of souls (*ecclesia curata*), but not *vice versa*. He may also, by virtue of his *potestas ordinaria*, change a parish whose rector is *amovibilis* into one whose rector is *inamovibilis*, but not *vice versa*,[53] as we have shown above.[54] The bishop may suppress parishes in all cases where he can unite them accessorily to other churches.

[49] Leuren., l. c., qu. 31.
[50] Ferraris, l. c., n. 27.
[51] Leuren., l. c., qu. 36, n. 1, 2.
[52] Bouix, De Paroch., p. 297.
[53] Leuren., For. Benef., p. iii., q. 964, n. 5.
[54] Supra, n. 258.

## § 4. *Manner of Appointing Irremovable Rectors, also in the United States—The Concursus.*

☞ 647. The Council of Trent, desirous that parishes should be provided with worthy and competent parish priests, enacted that appointments to parishes must be made by *concursus*, or *competitive examination*. Hence it ordained that when a parish falls vacant, the bishop shall fix a day for the competitive examination. On the day appointed, all those whose names have been entered for the examination shall be examined by the bishop, or his vicar-general, and by at least three synodal examiners. The vacant parish can be conferred by the bishop only on one of those who have successfully passed the examination. Nay, if several have been approved or passed by the examiners, the bishop must confer the parish on the one who is the *dignior* or most worthy among them. All appointments made contrary to these prescriptions are surreptitious, *i.e.*, null and void.[55]

Notwithstanding these clear enactments of the Council of Trent, it was found that in a number of dioceses the bishop's curia held both in theory and practice, either that the *concursus* was binding only on pain of the *illicitness*, but not of the *nullity* of the appointment, or that the Council of Trent obliged the bishop to appoint from among those who had successfully passed the examination merely the *dignus*, but not the *dignior*. Against these erroneous opinions Pope Pius V. issued his constitution *In conferendis* (May 16, 1567), in which he ordains chiefly: 1. That all appointments to parishes made without the *concursus*, as prescribed by the Council of Trent, are *null and void*, not merely illicit; 2, that the bishop is bound to appoint the *dignior*, and that he cannot select one who is merely *dignus*;[56] 3, that, therefore, those who

[55] Conc. Trid., sess. xxiv., c. xviii., De Ref.

[56] The opinion that the bishop is not bound to appoint the *dignior*, but can select one who is merely *dignus*, was also condemned by Pope Innocent XI. (1676–1679). See Bouix, De Par., p. 337.

have made the examination, but are not appointed, have the right to appeal, though only *in devolutivo*, to the metropolitan (or, where the metropolitan himself was the appointer, to the nearest ordinary, as delegate of the Holy See), or to the Holy See; 4, that thereupon a new examination must take place before the metropolitan and his synodal examiners, and the parish must be conferred upon him who, in this second examination, is found by the metropolitan to be *dignior*,"[57] *i.e.*, the most worthy.

However, these excellent regulations, like all that is good, were, as Benedict XIV. says, abused by the malice of men. Let us explain. As we have just seen, according to the regulations of Pope Pius V., the concursus had to be made over again before the judge of appeal, whenever an unsuccessful candidate appealed against the appointment made by the ordinary.

Now, the Council of Trent did not determine the *manner* in which the examination should be held—whether it should be *written* or *oral*. In consequence, various modes of holding the examination began to prevail. In some places it was oral; in others, in writing. Again, in some dioceses the same questions were put to the different candidates; in others, each candidate was examined on a different subject.[58] Hence it frequently happened that no *written* records or acts of the examination were extant. Consequently, when an appeal was made, the metropolitan found it necessary to admit the appeal and order a new examination, *on the mere allegation or statement of the appellant*, even where he showed no probable cause of complaint.[59] Owing to this state of things, it naturally occurred very often that competitors who were not appointed to the vacant parish would, without any legitimate or sufficient reasons, appeal to the metropolitan;[60] that

[57] See Const. *In conferendis*, in Pyrr. Corradus, Praxis benef., lib. iii., cap. iii., n. 4 sq.

[58] Bened. XIV., Const. *Cum illud*, 1742, § 7. [59] Ib., § 5. [60] Ib., § 3.

their appeal was forthwith entertained; and that the one appointed by the bishop was thus obliged to travel a distance away from his parish and undergo a new examination before the metropolitan, and that before the appellant had shown that his complaint was based upon any foundation whatever.[61]

☞ To remedy these evils, Pope Clement XI., by a decree,[62] issued by the S. C. C., Jan. 18, 1721, enacted: 1. That the examinations must be *in writing*, and that consequently the candidates must give *written* answers; 2, that the *same questions* must be given to all the candidates; 3, that the appeal against the unfair report of the examiners or the unreasonable appointment made by the bishop must be made within ten days from the day of the appointment to the parish; 4, that a new concursus shall not be ordered by the judge of appeal, unless it appears from the acts of the previous *concursus*—namely, from the *written answers* of the competitors—that in point of learning, the appellant has been wronged by the report of the examiners, or the appointment made by the bishop.

From this it will be seen that the decree of Pope Clement XI. did not do away with the necessity of making the *concursus* over again before the metropolitan. On this score, numerous complaints were made to the Holy See. It was said that this repetition of the concursus had this disadvantage, that the appellant competitor, though inferior to his rival, in point of learning, at the time of the first concursus, might prepare better for the second examination, and thus defeat his competitor the second time.[63] Again, it was complained that as the decree of Clement XI. allowed appellants to present to the judge *ad quem* new and additional testimonials of character, it happened not unfrequently that

[61] Bened. XIV., Const. *Cum illud*, § 3.

[62] This decree is embodied in the Const. *Cum illud*, § 7, of Bened. XIV.

[63] Bened. XIV., Const. *Cum illud*, § 4.

those appellants would, after the first concursus, collect all sorts of new testimonials, attesting their good character, fitness for the parish, etc., etc., and submit them to the judge *ad quem*, who would revoke the appointment of the ordinary and appoint the appellant to the parish, mainly on the strength of these new testimonials.[64] Finally, in a number of dioceses, the synodal examiners, contrary to the clear enactment of the Council of Trent (sess. xxiv., c. 18, De Ref.), in approving competitors, took into account *solely* their learning, and not also other prescribed qualifications.[65]

☞ To remedy these complaints, and thus to give the finishing touch to the law of the Church on the concursus, Benedict XIV., on the 14th of December, 1742, issued the Const. *Cum illud*, in which, after confirming the enactments of Pope Pius V. concerning the obligation of appointing the *dignior*, or the most worthy, and the right to appeal against the report of the examiners, or the appointment of the bishop, and also the law of Pope Clement XI. concerning the necessity of making the concursus *in writing*, he adds the following regulations: 1. When a parish falls vacant, the bishop shall, by a public edict, fix a suitable day for the holding of the competitive examination, notifying at the same time all who wish to make the concursus that they must, within this time and before the day set apart for the concursus, file with the diocesan chancellor all testimonials, judicial or extra-judicial, of their fitness, merits, qualifications, etc. After the expiration of this time no testimonial or document of any kind can be received.[66] 2. The chancellor must make out a written summary or synopsis of all the documents or testimonials presented by the various candidates; a copy of this synopsis will be given to the bishop, and to each of the examiners,[67] who, in approving candidates, after the examination, must take into account, not merely their learning, but

[64] Bened. XIV., Const. *Cum illud*, § 13.

[65] Ib., § 16, ii.

[66] Ib., §§ 10, 11.

[67] Ib., § 16, iii.

also their other merits and qualifications.[68] 3. In case a competitor who is rejected appeals either *a mala relatione examinatorum*, or *ab irrationabili judicio episcopi*, he must produce before the judge of appeal all the acts or records of the examination held in the first instance, which must be given him for that purpose by the chancellor. The judge *ad quem* must pronounce his decision solely and exclusively on the strength of the records or acts of the first concursus. Hence he cannot order any new concursus, nor receive any documents or testimonials other than those contained in the acts of the first instance.[69] 4. Finally, when the judge *ad quem* pronounces sentence *in entire conformity* with the appointment of the ordinary,—that is, in every respect, against the appellant and in favor of the competitor appointed by the bishop,—no further appeal is allowed, and the controversy becomes *res judicata*. But if he reverses the action or appointment of the ordinary, the competitor appointed by the bishop can appeal to the higher judge, whose sentence shall be final and unappealable.[70]

☞ From what has been said thus far, it will be seen that the general law of the Church, as in full force at the present day, may be summed up thus: 1. That all appointments to parihses must be made by *concursus*, on pain of nullity of the appointment; 2, that the concursus must be in writing; 3, that the bishop is obliged to appoint from among those who are approved by the examiners, the *dignior*, and cannot select one who is merely *dignus* (supra, n. 376); 4, that the examiners must take into account not merely the learning of the competitors, but also their other qualifications (supra, n. 367 sq.); 5, that the competitors, who are not appointed, can appeal, *in devolutivo*; 6, that the judge to whom the appeal is made must decide the case *solely from* the acts of the concursus already made, and cannot, therefore, order a new concursus, or admit additional testimonials.

[68] Const. *Cum illud*, § 16, iv. [69] Ib., § 16, vi. [70] Ib., § 17.

We have said that appointments made without the concursus are null and void. This is the general rule. For there are some exceptions, partly indicated already by the Council of Trent itself, partly introduced by custom, and partly sanctioned expressly by the Holy See. Thus, no *concursus* is required, 1, in the appointment of rectors or parish priests *ad nutum amovibiles*;"[71] for the Council of Trent speaks merely of *beneficia curata* which are *perpetua*, *i.e.*, those parishes which have irremovable rectors;"[72] 2, nor in appointments to parishes which possess so slight revenues as not to allow of the trouble of such examination; 3, nor in case grievous quarrels and tumults might result from the *concursus*;"[73] 4, nor (except in Rome[74]) in the appointment of vicars (*vicarii curati*) of parishes united (*parochiae unitae*) to monasteries, chapters, and the like—namely, where the *cura habitualis* is vested in the *parochus principalis* (*i.e.*, the chapter, etc.), and the *cura actualis* in the *vicarius*. For other cases, see Bouix."[75]

☞ 648. *Q.* What is the manner of appointing rectors in the United States?

*A.* We premise: Up to the *Third Plenary Council of Baltimore* held in 1884, all our rectors were *amovibiles*. The aforesaid council decreed that in future one rector out of every ten should be irremovable.[a] Hence we have at present two kinds of rectors, removable and irremovable.

We now answer: I. Our rectors who are *amovibiles* are appointed in the manner laid down by the Second Plenary Council of Baltimore, n. 126. II. As to our *irremovable* rectors. the *Third Plenary Council of Baltimore* enacts: 1. The creation of *missiones inamovibiles* and the appointment of the irremovable rectors must take place within three years from

[71] S. C. C., Jan. 12, 1619. [72] Bouix, De Par., p. 348.

[73] However, in these cases the ordinary must have before his eyes what the Council of Trent says in cap. xviii., sess. xxiv., De Ref., *in fine*.

[74] Craiss., n. 1330. [75] De Paroch., p. 347 sq. [a] Conc. Pl. Balt. III., n. 40.

the promulgation of the council, *i.e.*, from January 6, 1886.[b] 2. The bishop can appoint the irremovable rectors, *for the first time*, without the *concursus*, though not without the advice of his consultors;[c] after that, only by *concursus*,[d] and that on pain of nullity of the appointment. However, even after the *first* appointments, though only in a particular case, the bishop may, without the concursus, though not without the advice of the synodal or pro-synodal examiners, appoint an ecclesiastic to an irremovable parish, whose learning is abundantly attested either by the office which he holds, *v.g.*, if he is a synodal examiner, or by his dignity, or also by the long labors with which he has laudably served the Church.[e] 3. The concursus is made in the same manner as that laid down in the general law of the Church and described above; in other words, it is made before bishop or vicar-general and three synodal or pro-synodal examiners *in writing*, etc.[f] 4. Only those priests can be admitted to the concursus who have laudably exercised the sacred ministry *for at least ten years*, in the diocese, and have within that time given proof of their ability to govern the parish spiritually and temporally, either in the capacity of simple rectors, or in some other way.[g] 5. The mission must be conferred on the *dignior*, *i.e.*, the most worthy among those who passed the examination, and cannot be conferred on one who is merely *dignus*. 6. The examiners can and should approve all who are worthy or *digni*. The bishop alone has the right to determine which one among the approved is the most worthy, or *dignior*. However, the bishop may laudably, before making the appointment, ask the advice of the examiners as to whom

[b] Conc. Pl. Balt. III., n. 35. [c] Ib., n. 37. [d] Ib., n. 36, 57.

[e] Conc. Pl. Balt. III., n. 57; cf. Ib., p. 204, Instr. S. C. de P. F., Oct. 10, 1884, De Concursu.

[f] Cf. Conc. Pl. Balt. III., n. 41 sq., where the manner in which the concursus must be made is carefully described.

[g] Conc. Pl. Balt. III., n. 36, 43.

they regard as the *dignior* or most worthy.[h] 7. Competitors who are not appointed have a right to appeal "in devolutivo" to the metropolitan or Holy See against the appointment made by the bishop, and also against the unfair report of the examiners, as provided in the Const. *Cum illud* of Pope Benedict XIV.[i] 8. The judge to whom the appeal is made must decide the case solely and exclusively from the acts of the concursus already made. Hence he cannot order the concursus to be made over before him and his synodal examiners; nor can he receive any new testimonials whatever as to the fitness, etc., of the appellants. 9. Finally, where on account of the vast extent of the diocese and the distance of places, *v.g.*, in some of the Western and Southern dioceses, or other peculiar obstacles, a *special* concursus can be held only with difficulty, every time an irremovable parish falls vacant, it is allowed to separate the concursus, by which the *learning* of the candidates is ascertained, from that by which the other canonical qualifications are determined, in such manner that a *general* examination will be held once a year, in the manner above explained, for the purpose of finding out the learning of the competitors; that the other requisite qualifications will be passed on by the examiners each time a parish falls vacant.[j] Those who have once passed the annual examination will be regarded as worthy, so far as their learning is concerned, of being appointed to any irremovable parish that may fall vacant within six years after their approval. On the lapse of six years, however, they must un-

[h] Conc. Pl. Balt. III., n. 36, 52; Bened. XIV., De Syn., l. iv., c. viii., n. 6.

[i] Conc. Pl. Balt. III., n. 36.

[j] At the *Vatican Council* the German bishops made this proposal: "Decretum S. C. Trid. de *concursu pro parochiis speciali* instituendo in multis amplioribus dioecesibus nunquam in usum pervenit, in multis aliis autem jam approbante S. Sede Ap. ejusdem loco hodie *concursus generalis* habetur. Propterea petimus ut illud S. C. Trid. decretum revisioni submittatur, et ea examinis sive concursus norma praescribatur, quae ubique valeat ac debeat observari" (Martin, Doc., p. 172; cfr. ib., pp. 144, 174).

dergo the examination again, if they wish to be appointed to an irremovable parish.[k]

Irremovable rectors in Ireland are appointed without the *concursus*. Thus the Plenary Synod of Maynooth says:[l] "Cum per circumstantias hujus regionis *concursus* quamvis optandus, vix introduci possit, episcopi diligenter caveant ne paroeciae conferantur nisi iis, qui a synodalibus examinatoribus, si adsint, sin vero, a theologis ab episcopo delectis approbati fuerint, quique moribus ac scientia caeteris praestent." Likewise, the irremovable rectors in England are appointed without the *concursus*. However, it seems certain that in the near future the *concursus* will be prescribed for the appointment of irremovable rectors in both these countries.

### ART. II.

### *Rights of Parish Priests, and of Rectors, in the United States.*

#### § 1. *General Remarks.*

☞ 649. The following remarks, though applying chiefly to parish priests proper, are nevertheless, in a measure, also applicable to our rectors. For all our rectors, even those who are not irremovable, possess parochial or quasi-parochial rights[m] which are laid down partly in the Second Plenary Council of Baltimore, Nos. 111, 112, 117, 227, and also in the statutes of provincial and diocesan synods.[n] These *rights* of our rectors necessarily imply corresponding *duties* on the part of their congregations, and other rectors. Thus, for instance, a rector with us has the right to administer baptism, marriage, the viaticum, and extreme unction to his parishioners. Consequently, the parishioners cannot lawfully receive the sacraments from other rectors, nor can the rectors themselves lawfully administer them to non-parishioners.

[k] Conc. Pl. Balt. III., n. 58; see the Instr. S. C. de P. F., Oct. 10, 1884, on this *general* concursus (Conc. Pl. Balt. III., p. 203).

[l] Syn. Pl. Maynut., n. 183.

[m] Konings, n. 1138.

[n] Conc. Pl. Balt. II., n. 124.

The rights of parish priests relate chiefly to the administration of the sacraments of baptism, penance, the Blessed Eucharist, matrimony, and Extreme Unction; to funerals, parochial functions, etc.

§ 2. *Rights of Parish Priests relative to the Sacraments.*

650. We premise: Every parish, as was shown, must have certain fixed limits. By parishioners are meant, as a rule, the faithful who live within the boundaries of the parish.[76] Now, of these, 1, some have a *domicilium proprie dictum*—those, namely, who have come into the parish with the intention (manifested) of living there permanently, if nothing should call them away; 2, others have but a *quasi-domicilium—i.e.*, dwell in the parish for a considerable part of the year,[77] or at least with the intention of remaining so long—*v.g.*, students in colleges, servant-girls;[78] 3, a third class, finally, live in the parish but temporarily; they are named strangers (*peregrini*); if they travel from place to place, having nowhere a domicile or quasi-domicile, they are called wanderers (*vagi*). We shall now pass to the several sacraments. I. *Rights of Parish Priests relative to Baptisms.*—Parishioners—that is, not only the faithful who have a domicile, but also those who have but a quasi-domicile, in the parish—are bound, as a rule, to bring their children to their parish church for baptism;[79] and they sin mortally by having their children baptized in another parish without the permission of their parish priest. Persons who have nowhere a domicile or quasi-domicile can have their children baptized wherever they wish. A priest who, except in case of necessity, should presume to baptize children belonging to another parish, without the

[76] Phillips, l. c., p. 343. [77] Bouix, De Judic. Eccl., vol. i., pp. 267, 275

[78] Hence, a person may have a domicile proper in one place, and at the same time a quasi-domicile in another—*v.g.*, persons living in the city during winter and in the country during summer. [79] Bouix, De Paroch. p. 443.

permission—at least, presumptive—of the respective pastor, would commit a mortal sin. This prohibition is applied to the United States in the following modified manner: "Gravissima reprehensione digni sunt sacerdotes, qui infantes ab aliena sive paroecia sive dioecesi, sibi oblatos temere baptizant, cum facile a proprio pastore baptizari possunt. Abusum hunc iterum damnamus ac prohibemus."[60]

651.—II. *Rights of Parish Priests respecting the Sacrament of Penance.*—A parish priest, by virtue of his office, has *jurisdictio ordinaria in foro interno* in his parish. We say, *in his parish;* for a parish priest, as such, cannot hear (except his parishioners) in the whole diocese, but only in the confines of his own parish. In order to avoid difficulties, therefore, it were advisable, according to Bouix,[61] that each bishop should expressly give all his parish priests faculties to hear in the whole diocese. In many places parish priests are understood by custom to have jurisdiction in every part of the diocese. Formerly parish priests possessed *exclusively* the right to hear their parishioners. This prerogative has lapsed. At present the faithful may, without the permission of their parish priest, confess, even in paschal time or when in danger of death, to any priest, secular or regular, who is approved by the bishop.[62] Has the parish priest a right to demand from his parishioners presenting themselves for holy communion in paschal time a certificate as to their having made their confession to an approved priest? We answer: 1. Wherever this is not prescribed by the ordinary a parish priest cannot exact such certificate, except from those parishioners whom he may, for grave reasons, suspect of not having gone to confession, even though they assert the contrary. In giving this certificate the confessor should merely state the fact of the confession having been made, but not

[60] Conc. Pl. Balt. II., n. 227; our Notes, n. 202–205.
[61] L. c., p. 445.
[62] Phillips, l. c., p. 346.

whether absolution was given.[63] 2. The above, as is evident, applies to countries only where there are canonical parish priests, and where, consequently, the faithful are bound to receive their paschal communion in their parish church, but not to the United States, where the faithful can make their Easter communion *everywhere.*

652. *Confessors in the United States.*—1. As our rectors, even those who are irremovable, are not canonical parish priests, it would seem that they cannot hear their parishioners outside the diocese.[64] 2. Formerly, according to an agreement among our bishops in 1810, a priest approved for one diocese could hear confessions all over the United States.[65] This agreement no longer exists. Hence, at present, no priest can hear out of the diocese for which he is approved.[66] 3. All our priests—*i.e.*, assistants no less than pastors—are, as a rule, approved for the whole diocese.

653.—III. *Rights of Parish Priests in regard to the Administration of the Blessed Eucharist.*—I. Where there are canonically-established parishes the faithful are bound to receive the paschal communion *in their parish church;*[67] if they communicate elsewhere without the permission of their parish priest, they do not fulfil the precept of the Church. From the obligation of receiving the paschal communion in the parish church are exempted chiefly: 1. Strangers (*peregrini, advenae*) who cannot conveniently go to the place of their domicile. 2. Wanderers or tramps (*vagi*).[68] These two classes are not even bound to receive their paschal communion in the parish where they are, but can satisfy the precept by communicating in the churches of religious.[69] 3. Seculars employed as servants in monasteries and religious houses, provided they be in actual service, residing in

[63] Bouix, l. c., p. 447.
[64] Kenr., tr. xviii., n. 133.
[65] Conc. Pl. Balt. II., n. 118.
[66] Konings, n. 1394.
[67] Supra, n. 430.
[68] Craiss., n. 1358.
[69] O'Kane, n. 759.

the houses of the religious, and living under obedience to the regular prelate. We say, *living under obedience*, etc.; by this we do not mean the obedience due by religious profession,[a] but simply the obedience due *ratione famulatus—i.e.*, the obedience which servants, as such, owe to their masters.[b] Whether seculars who reside permanently in religious houses, as in places of retreat, can fulfil the paschal precept in those houses without the permission of the parish priest is questioned by some. As to students in colleges conducted by religious, see n. 431. At present the faithful, with the exception of their Easter communion, can receive the Blessed Sacrament in any church or public chapel. Hence, regulars can distribute holy communion in their churches to seculars during the whole year, even during paschal time, except Easter Sunday alone—nay, in the United States, even on Easter Sunday. For, with us, the faithful almost everywhere can make their paschal communion where they please.

654. *Observation.*—We just said, *almost everywhere*; that is, except in certain parishes of California. For in this State the faithful and rectors of those parishes which are regarded as canonical parishes (though the rectors in charge of them are not canonical parish priests) are mutually bound by all the duties of parishioners and parish priests proper, as laid down by the *jus commune.* Hence, the former must receive their paschal communion in their parish church. This is evident from these words of the fathers of the First Provincial Council of San Francisco: *Declaramus rectores earum paroeciarum, quae habentur uti paroeciae proprie dictae, teneri ad omnia munia parochorum erga fideles intra limites suarum ecclesiarum constitutos adimplenda; fideles autem jus habere ad subsidia spiritualia ab illis ceu a propriis animarum rectoribus recipiendum, ac specialiter teneri ad ipsos recurrere pro communione paschali, baptismo, viatico, extrema unctione, et matrimo-*

[a] Supra, n. 431. [b] Bouix, De Jure Reg., vol. ii., p. 201.

*nio.* From these words it would seem to follow that the above pastors are obliged to offer up Mass for their people on Sundays and holidays, and that they can validly and lawfully hear their confessions everywhere."[92]

655.—II. *Sacrifice of the Mass.*—According to the present discipline of the Church, the faithful are not bound, though they should be strenuously exhorted, to hear Mass on Sundays and holidays of obligation *in their parish church.*"[93] Parishioners, therefore, can satisfy the precept of the Church by hearing Mass in *any* church, public chapel, or even in the private chapels of regulars, but not in the private or domestic chapels of seculars."[94] In the United States the faithful fulfil the precept by assisting at the Holy Sacrifice *anywhere.*"[95]

656. *Q.* Can a parish priest celebrate two Masses on the same day (*binatio, binare*)?

*A.*—I. *Universal Discipline of the Church or Provisions of the Jus Commune on this head.*—Formerly priests were allowed to celebrate several times a day. But, at present, this is prohibited, except (*a*) on Christmas (*b*) and in the case of necessity. Now, what can be regarded as cases of necessity? We answer by the following propositions: *Prop. I. Many cases which were formerly considered by canonists as cases of necessity cannot be considered as such at the present day.*—Thus, canonists formerly held that a priest could say a second Mass on the same day—*v.g.*, for the accommodation of strangers, princes, or bishops arriving too late for the first Mass. This opinion is no longer tenable."[96] *Prop. II. Prescinding from extraordinary occurrences, there is at the present day only one practical case of necessity authorizing the "binatio"—namely, (a) when either an entire congregation, or (b) a large portion of a congregation, is debarred from hearing*

[92] Konings, vol. i., p. 471, edit. 2a.

[93] Bouix, l. c., p. 196.

[94] Bouix, De Par., p. 451.

[95] Supra, n. 430.

[96] Kenr., tr. iv., p. ii., n. 14.

*Mass on Sundays and holidays unless the pastor says two Masses on the same day.*—We say, 1, *an entire congregation;* hence, a pastor who has two parishes at so great a distance from each other that the people in one of the places cannot conveniently go to the other place for Mass can say two Masses a day, one in each parish.[97] We say, 2, *or a large portion*, etc.; hence, a pastor can say two Masses a day in the *same church*, if, *v.g.*, three hundred parishioners are otherwise deprived of Mass—*v.g.*, because the church is too small to hold the entire congregation at the same time. We say, 3, *on Sundays and holidays;* that is, the necessity for saying two Masses can occur on those days only on which the faithful are bound to hear Mass, but not on week-days, nor on Holy Thursday or Good Friday. Observe that, as a rule, the permission of the bishop is required for the *binatio* even in the above circumstances. But is the bishop's permission sufficient, or is that of the Holy See necessary, at least when the two Masses are to be said in the *same church?* Bouix[98] holds against the *Analecta J. P.* that no Papal permission is requisite. For the *binatio*, in the case of necessity, is permitted by the *jus commune* itself.[99]

657.—II. *Particular Discipline* (*jus speciale, particulare*), *in this matter, of the Church in the United States and Countries similarly circumstanced.*—So far we have shown in what cases canonical pastors can celebrate twice a day by virtue of the *jus commune*, and therefore without a Papal indult. Now, can rectors or priests in the United States celebrate twice a day under conditions less stringent than those prescribed by the *jus commune?* They can; for bishops in the United States,[100] Ireland,[101] England,[102] and, in fact, almost

[97] Bouix, De Par., p. 453. [98] L. c., p. 456.

[99] Namely, by the decretal *Consuluisti* (issued by Pope Innocent III. in 1212), which still has the force of common law, as it was never revoked by any subsequent pontifical decree.

[100] Fac., form. i., n. 23. [101] Syn. Pl. Thurles., ap. Coll. Lac., iii., p. 781.

[102] Conc Prov. Westmon. I, A.D. 1852; ap. Coll. Lac., iii., p. 933.

everywhere, have special faculties from Rome to allow of *binatio*. Now, it is evident that, by these faculties, the above bishops have fuller powers on this head than they have by the *jus commune;* otherwise, such faculties were useless, since they would confer upon bishops no powers not already vested in them by the *jus commune*.[103] Hence, the above bishops can allow *binatio* in cases where it is not permitted by the common law. Thus, priests in the United States and the above countries, by episcopal permission, can say two Masses a day—*v.g.*, not only when a *great* (*v.g.*, three hundred persons), but when a *considerable*, number of persons (*v.g.*, thirty) would otherwise be deprived of Mass on Sundays and holidays—*v.g.*, because they live too far from church, or because some must stay at home while the others go to Mass. *Observation.*—A parish priest proper—*i.e.*, one who is *bound* to offer up Mass for his people on Sundays and holidays—cannot receive a stipend for any of the Masses when he celebrates twice a day.[104] We say, 1, *parish priest;* because other priests, not in charge of souls (*v.g.*, assistants), can undoubtedly accept of a stipend for one Mass on Sundays as well as on week-days. We say, 2, parish priest *proper;* hence, rectors in the United States,[105] not being canonical parish priests, are exempt from the obligation of celebrating for their congregations, and therefore can accept of a stipend for *one* Mass on Sundays and holidays; nay, at present, according to Konings (n. 1327, q. 7, ed. 3ia), by Papal indult, *all bishops* of missionary countries can, for grave and just cause, allow priests, when they say two Masses a day, to receive a stipend for each Mass. (C. Pl. Balt. III., n. 105.)

658.—IV. *Rights of Parish Priests in regard to the Sacrament of Matrimony—Rights of Parish Priests proper in places*

[103] Cfr. Instr. S. C. Prop., May 24, 1870, n. 11 seq., ap. Konings, p. lvi.

[104] Bouix, l. c., p. 459. He can, however, accept of an honorary *in compensationem laboris* of the second Mass (Bouix, l. c.)

[105] As to California, see supra, n. 654.

*where the Tridentine Decree "Tametsi" is in force.*—Wherever the decree *Tametsi*[106] is published marriages, in order to be valid, must be contracted in presence of the *parochus proprius* of the contracting parties.[107] Now, by the *parochus proprius* is meant: 1. *The parochus domicilii—i.e.*, the one in whose parish the parties have their domicile, but not the *parochus originis*, or the one in whose parish they were born. Hence, if the parties belong to two different parishes, they may be married by the parish priest of either parish The same holds true if one of the parties has two places of domicile. It is more becoming that the marriage be solemnized by the pastor of the place to which the bride belongs. 2. *The parochus quasi-domicilii;* hence, public or government officials, professors, and students, who have a quasi-domicile in a certain place, may validly contract before the pastor of such place. The same holds of soldiers, servants, boys and girls in asylums.[108] Youths in colleges and girls educated in convents may contract before the pastor in whose parish the college or convent is situate, though the proper course is to send them home, so that they may marry where their parents reside.[109] *Vagi—i.e.*, those who have nowhere a fixed domicile—can contract in presence of the parish priest of the place where they are for the time being; this holds even though but one of the parties is a *vagus.*[110] 3. *The bishop, vicar-general, and vicar-capitular;* these dignitaries can assist validly at marriages throughout the whole diocese. The chief rights of the *parochus proprius* are: (*a*) To publish the banns of matrimony. This law is in force also

[106] Conc. Trid., sess. xxiv., c. i., d. R. Matr.

[107] Cfr. Feije, De Imp. et Disp. Matr. Lovanii, 1874.—In the *Council of the Vatican* a proposal was made by a number of French bishops to the effect that the *impedimentum clandestinitatis* be somewhat modified, so that in future the presence of the *parochus proprius* would be required merely for the *lawfulness*, not the *validity*, of marriages, and that marriages contracted before *any priest* would be valid (Martin, Arbeiten, p. 103; Doc., p. 157).

[108] Phillips, Lehrb., p. 618. [109] Feije, l. c., n. 232. [110] Ib., n. 238.

in the United States.[111] If the parties belong to two different parishes, the proclamations must be made in both. A pastor with us, therefore, who omits the proclamations without grave reasons, is guilty of mortal sin. (*b*) To bless (*benedictio nuptialis*) and assist at the marriage. (*c*) To receive the offering usually made by those who are married, even though another priest has been deputed by him to solemnize the marriage.[112]

659. *Rights and Duties of Rectors in the United States respecting Marriages.*—It is certain that the Tridentine decree *Tametsi* is not promulgated or observed in most of the dioceses throughout this country;[113] wherefore marriages with us, except, of course, where the decree *Tametsi* obtains, contracted by the *sole consent* of the parties, without the presence of the rector or any other priest or witnesses, are valid, though illicit. The right to assist at marriages and to impart the *benedictio nuptialis* belongs always to the rector of the contracting parties. Hence rectors with us are strictly forbidden to unite in marriage parties belonging to another diocese or parish.[114] And if a pastor, in case of necessity, marries outside parties, he should remit the perquisites to the respective pastor of the parties. According to the Boston statutes, this is to be done *ex titulo justitiae.*

☞ *Q.* In what parts of the United States does the decree *Tametsi* obtain?

*A.* We premise: The decree *Tametsi* may become obligatory in a place in two ways—namely, either by a *formal* or by a *virtual* promulgation. By the formal promulgation is understood that which is laid down in the Council of Trent (sess. xxiv., c. i., De Ref.). By virtual promulgation is meant *the very fact of the observance* of the decree in a place where it has not been actually published. Conse-

[111] Conc. Pl. Balt. II., n. 332, 333.
[112] Conc. Pl. Balt. II., n. 340.
[113] Bouix, l. c., p. 464.
[114] Conc. Pl. Balt. II., n. 117.

quently the decree becomes binding not only where it has been formally published, but also where it is being observed, without having been promulgated (cf. Konings, n. 1605; Sabetti, n. 911).

We now answer: We have said that the decree in question is not in force *in most* of our dioceses; for in *some* it is in force. Prior to the *Third Plenary Council of Baltimore*, held in November, 1884, there was considerable doubt and uncertainty as to where the decree did and where it did not obtain. The *Third Plenary Council*, at the request of the Holy See, carefully investigated the whole matter, and came to the following conclusion:

I. The decree *Tametsi* (C. Trid., sess. xxiv., c. i., De Ref.) *does not obtain* in the following ecclesiastical provinces: 1. Baltimore; 2. Philadelphia; 3. New York; 4. Boston; 5. Oregon; 6. Milwaukee; 7. Cincinnati, save in the diocese of Vincennes; 8. St. Louis, except in the city of St. Louis itself and several other places of the same archdiocese given below; 9. Chicago, except in some places of the diocese of Alton to be mentioned presently.

II. The decree *Tametsi is considered as being in force* in the rest of the United States—namely, 1, in the entire province of New Orleans; 2, in the province of San Francisco, together with the Territory of Utah, save that part of the Territory of Utah which lies east of the Colorado River; 3, in the province of Santa Fé, save the northern part of Colorado; 4, in the diocese of Vincennes; 5, in the following places of the archdiocese of St. Louis—in the city of St. Louis, and in the places called St. Genevieve, Florissant, and St. Charles; 6, in the places called Kaskaskia, Cahokia, French Village, and Prairie du Rocher, all four in the diocese of Alton. See the *Third Plenary Council of Baltimore*, p. cvii, which also enumerates the places, with us, to which the *Declaratio* of Pope Benedict XIV., issued for Holland, in 1741, has been extended.

660. *How should pastors, especially in the United States, proceed when strangers (peregrini) and wanderers (vagi) present themselves for marriage?* 1. Where the universal law of the Church on this head can be observed, a certificate *de statu libero* of the parties wishing to get married should be procured from the ordinary to whose diocese they formerly belonged. This certificate should be attested both by the above ordinary and the ordinary of the pastor before whom the parties wish to get married.[115] A pastor, therefore, to whom vagrants or strangers present themselves for marriage must refer the matter to his bishop, whose duty it is to procure the necessary certificate.[116] A neglect of these precautionary measures would not, however, annul the marriage. 2. In the United States the law prescribing the above mode of procedure is, *per se*, binding.[117] Hence, it should, wherever feasible, be carried into effect. In most cases, however, it can scarcely be observed; for, with us, no small number of strangers presenting themselves for marriage have come from nearly all parts of the globe, even the most distant, or are constantly moving from one State to another, thus making it almost impossible to procure from their former ordinary the above certificate based upon the testimony of competent witnesses.[118] Hence, there are scarcely any other means, with us, of ascertaining the *status liber* (*i.e.*, the absence of any annulling impediment, especially of the *impedimentum ligaminis*) of strangers than, 1, their own *sworn* affirmation; 2, the testimony of others who know them, or of their former pastor in another (*i.e.*, neighboring) diocese.[119] A pastor, therefore, with us, before solemnizing the marriage of such parties, should assure himself that they are *in statu libero—i.e.*, not actually married or under any an-

[115] Instr. S. Off. in 1670 and 1827.
[116] Feije, l. c., n. 254, 255
[117] Cfr. Feije, l. c., n. 258.
[118] Kenr., tr. xxi., n. 193; cfr. Heiss, p. 181. Monach., 1861.
[119] Cfr. Feije, l. c., n. 261.

nulling impediment[130]—either by making the parties themselves take an oath to that effect, or by enquiring of parties who know them, or by writing for information to their former pastor, according as the case or circumstances admit of one or more, of this or that one, of these evidences. Where any doubt still remains, the bishop should be consulted. Kenrick[131] holds that a priest in the United States who marries parties *actually* belonging to other parishes is, *ipso jure*, suspended (*ab officio* only, not *a beneficio*[132]), and remains so until absolved by the ordinary of that pastor who ought to have been present at the marriage. According to Feije,[133] however, the *suspensio* just mentioned is incurred only in places where the decree *Tametsi* is promulgated, and therefore not—at least, *de jure commune*—in most dioceses of this country. The right to administer Extreme Unction and the Viaticum to parishioners is reserved to the parish priest in such manner that other priests cannot, except in case of necessity, licitly confer these sacraments without the pastor's or bishop's permission. Strangers may receive both these sacraments from the priests of the place where they lie ill.

### § 3. *Rights of Parish Priests relative to Funerals—Customs in the United States.*

661. The rights on this head may be reduced chiefly to two—namely, the right, 1, to bury or have a burying-ground (*jus sepeliendi*); 2, to receive certain emoluments or burial dues (*jura funeraria*). I. *Right to Perform the Burial.*—The parish priest has, *de jure commune*, the right to demand that, as a rule, his parishioners be buried in the parish cemetery.[134] We say, *as a rule;* for the following persons can be buried out of their parish cemetery: 1. Those who have selected their place of burial elsewhere. Now, all persons,

[130] Cfr. Feije, l. c., n. 256, 259.
[131] L. c. [132] Ib., l. c., n. 283. [133] L. c. [134] Phillips, l. c., p. 725

except *impuberes* and religious,[125] are perfectly at liberty to choose their place of interment *in any Catholic cemetery*[126]—*i.e.*, not only in cemeteries attached to parochial churches, but also in such as are annexed to non-parochial churches, colleges, and other institutions. For, although parish churches alone can, *de jure ordinario*, have cemeteries, yet *any* non-parochial church, college, etc., may be authorized by the bishop to have a cemetery. Religious communities are empowered by the *jus com.* to have cemeteries. 2. Those who have a family lot (*sepulcrum gentilitium, sepulcrum majorum*) in another Catholic cemetery;[127] these not only *can*, but *should*, be buried in such lot. In the United States Catholics may sometimes be buried in their family lots, even though situate in sectarian or profane cemeteries. Thus, a deceased convert may be interred in a lot owned by his non-Catholic relatives and situate in a sectarian or profane cemetery. The same applies to those deceased persons whose relatives, though Catholic, (*a*) have, in good faith, purchased a lot in a non-Catholic cemetery, or (*b*) own one in such cemetery from the year 1853.[128] The *Third Plenary Council of Baltimore* (n. 317, 318) enacts that in all these cases, where the burial takes place in a non-Catholic cemetery (*a*), the *funeral services of the Church* can be performed by the rector, and that either in the church or at the house, unless the bishop orders the contrary; (*b*) and that the grave, in the case, *should be blessed.*

662.—II. *Right of Receiving Emoluments.*—Funeral dues are of two kinds, according as they are given to pastors (*a*) for performing the funeral rites, or (*b*) for the grave or lot (*locus sepulturae, sepultura, fundus*). 1. *Dues for Funeral Services.*—It is certain that nothing can be demanded from the poor, nor, as a rule, even from others, except for extraordinary funeral services, such as High Mass *de requiem.* We

[125] Religious should be buried in the community graveyard.

[126] Laics, however, cannot select their place of burial in the cemeteries of nuns, except by special leave from Rome (Craiss., n. 1396).

[127] Walter, § 320.

[128] Conc. Pl. Balt. II., n. 392.

say, *as a rule;* for, where it is customary, pastors may receive—nay, even demand, from persons able to pay—the usual dues, even for performing the ordinary funeral services, as given in the Ritual—*i.e.*, without a Mass, etc.[131] In the United States pastors do not, as a rule, receive anything for reciting the ordinary funeral services of the Ritual; they are, however, liberally compensated for "extraordinary funeral services," such as solemn Masses for the dead. 2. *Dues for Place of Interment.*—According to the *jus commune*, it is forbidden, as a rule, to charge, or even receive,[132] anything for graves, except where the cemetery is not yet blessed. We say, *as a rule;* for when graves are located in a more desirable part of the cemetery, it is allowed to charge something for them, though only on account of their choice location (*ratione honorabilioris situs, seu dignioris loci*). From this it is evident that the practice in the United States of making the faithful pay for single graves,[133] no matter in what part of the cemetery they may be located, is scarcely in harmony with the universal law of the Church. The necessity of paying for cemeteries and keeping them in a proper condition would seem to somewhat justify the custom. According to Konings,[134] all difficulty will be obviated either by asking for payment of the grave only after the interment, or, what seems better (as people seldom pay *after* the interment), by setting apart in each cemetery a special place for the poor and those who do not wish to pay; thus, the remainder of the cemetery becomes at once a more eligible site for graves, which, consequently, can be lawfully sold, though not absolutely.[135] Where deceased persons in the United States are

[131] Craiss., n. 1426; cf. Bouix, l. c., p. 486.

[132] Except where money is *voluntarily* given. Ferraris, l. c., n. 156.

[133] We say, *single graves;* for it would seem that, practically speaking, regular charges can be made for family lots (*sepulcra gentilitia*)

[134] N. 356, (4); cf. Kenr., tr. xii., n. 69.

[135] The faithful, by purchasing graves or family lots, obtain merely the right to be buried there, to the exclusion of other parties (Ferr., l. c., n. 147, 148).

buried either outside their parish or in a different place from that where they died, the funeral services are sometimes held in both places—*i.e.*, in the place of death and also in the place or church of interment. This is not unlawful, though it is sufficient to hold these services in the church whence the burial takes place.[136]

§ 4. *Rights of Parish Priests respecting Parochial Functions and Dispensations.*

663.—I. *Parochial Functions.*—Besides the administration of certain sacraments, there are other ecclesiastical functions performable by pastors only or with their consent. They are called *jura parochi privativa, functiones mere parochiales,* in contradistinction to the *jura parochi cumulativa, functiones mere parochiales,* or those functions which rectors, as such, have indeed the right to perform, but not to the exclusion of other persons. The churching of women, for instance, is an exclusive right of the rector, where custom or diocesan statutes so ordain, while the celebration of solemn Mass on Holy Thursday belongs also to others.[137] II. *Power of granting Dispensations.*—It is the common opinion that, by virtue of general custom, parish priests can, for just cause dispense their parishioners individually, though not collectively, from the precept of fast.[138] They can also give them permission, though only for a time and for particular cases, to perform servile labor on holidays of obligation. As a rule, persons obliged to work publicly on holidays, even when there are undoubted reasons for so doing, should first obtain permis-

[136] Craiss., n. 1414, 1430. [137] Bouix, l. c., p. 490; Phillips, l. c., p. 345.

[138] In the *Vatican Council* a proposal was made by a number of French bishops, the import of which was that the present ecclesiastical laws respecting fasts and abstinence (the observance of which, it was alleged, was at present so different not only in different countries, but also in different provinces—nay, in the several dioceses of the same province) be made *more uniform* and *as lenient as possible* (Martin, Arb., p. 108; Doc., p. 161).

sion from the pastor or bishop.[139] *Observations.*—1. *Our bishops* may—in fact, usually do—by virtue of pontifical indult, give their priests power *dispensandi quando expedire videbitur, super esu carnium, ovorum et lacticiniorum tempore jejuniorum et quadragesimae.*[140] 2. The faithful with us, when compelled to labor on holidays, or even on Sundays, do not, as a rule, ask permission from the priest, though they should be admonished to do so.

## ART. III.

### *Duties of Rectors, especially in the United States.*

664.—I. *Profession of Faith.*—Irremovable parish priests are bound,[141] within two months at the latest from the day of their obtaining possession of their parishes, to make a public profession of their faith (*professio fidei*) in the presence of the bishop, and to take the oath of obedience to the Roman Pontiff, according to the formula laid down by Pius IV.[142] We said, *irremovable parish priests.* Now, according to some canonists, removable parish priests are also, *jure com.*, obliged to make this profession;[143] according to others they are not.[144] It seems certain, therefore, that those rectors, at least in the United States, who are irremovable, are bound to make the above profession of faith.

665.—II. *Duty of Residence.*—I. Parish priests are bound —at least, *jure ecclesiastico*, and that *sub gravi*—to reside in their parishes. We say, *at least*, etc.; for whether they are obligated also *jure divino* is a disputed question. II. What parish priests are obliged to residence? 1. Both removable and irremovable pastors; 2, administrators of parishes—that is, priests placed in charge of vacant parishes until new pas-

[139] Craiss., n. 1437.
[140] Fac., form. i., n. 27.
[141] Conc. Trid., sess. xxiv., c. xii., d. R.
[142] Bouix, l. c., p. 513
[143] De Camillis, Inst. J. C., t. iii., p. 248.
[144] Craiss., n. 1446.

tors are appointed; 3, assistants (*coadjutores*) given to pastors who are unable, by reason of sickness or old age, to discharge their duties; 4, other assistants are not bound by the law of residence, though they should not be absent without the permission of the pastor or bishop. III. For certain causes rectors may, at times, be absent from their parishes. Now, what are these causes? 1. For an absence of more than two months a *causa gravis* is required, such as ill-health, *Christiana caritas*,[145] etc. 2. For an absence of only two months, whether continuous or interrupted, any reasonable cause (*causa aequa*)—*v.g.*, the need of recreation—is sufficient. IV. Besides a legitimate cause, the permission of the bishop, in writing, is necessary, and that even for an absence of one week. If, however, a pastor is obliged to absent himself without having time to ask for permission, he may go away, provided he leave some approved priest in his place or request a neighboring pastor to attend to sick-calls and the like, and inform the bishop, as soon as possible, of his absence.[146] V. According to St. Liguori, parish priests teaching theology, Sacred Scripture, or canon law in public institutions—*v.g.*, in diocesan seminaries—may probably be excused from the law of residence, as such teaching redounds to the good of the whole diocese—nay, of the entire Church. The duty of residence, which is particularly urgent during contagious diseases, comprises not only the obligation of physically dwelling in the parish, but also that of laboring for its good. Hence, a pastor cannot leave all the parochial duties in the hands of his assistants, but must personally, unless lawfully hindered, perform some, especially, of the more important ones, such as preaching, administering the sacraments.[147] He may, however, require his as-

[145] Supra, n. 545. What has been said (supra, n. 544–549) concerning the residence of bishops applies in most particulars also to the residence of pastors (Bouix, l. c., p. 518).

[146] Craiss., n. 1461, 1462.

[147] Bouix, l. c., p. 542.

sistants to attend to the more arduous duties, such as sick-calls at night, attending to out-missions. As a rule, pastors should reside *within the limits* of their parishes—nay, in the parochial house, if there be one. VI. *Penalties of Unlawful Absence.*—Pastors absent more than two months in the year without sufficient cause forfeit, *ipso facto*,[148] their salary, in proportion to the time of their absence. According to St. Liguori, however, they forfeit only a part, not the whole, of their salary for the time they were unlawfully absent; for they receive their income not merely for residing, but also for saying the office and performing other duties. VII. *Residence of Rectors in the United States.*—The law of residence, as was seen, binds not only irremovable pastors, but, in general, all priests having charge of souls, and hence also our rectors.[149] Diocesan statutes, with us, usually require that rectors should, if possible, obtain the bishop's leave whenever they are to be absent for an entire week at a time.[150]

666.—III. *Obligation of offering up Mass for the People; of Preaching; of Catechising the Children; and of taking care of the Parochial Schools.*—I. *Obligation of Saying Mass for the Parishioners.*—Canonical parish priests (secular or regular), even though *amovibiles ad nutum*, vicars (*vicarii curati*) of *parochi principales*, and priests (*vicarii temporales*) placed in charge of vacant canonical parishes until a new rector is appointed, are bound on Sundays and holidays of obligation to gratuitously offer up the sacrifice of the Mass for their people. This obligation attaches, generally speaking, also to parish priests in Ireland and Canada,[151] but not (except in some parts of California) to rectors in the United States.[152]

[148] Hence, they cannot in conscience draw or retain such salary, but must apply it to the church or the poor of the place.

[149] Conc. Pl. Balt. II., n. 114; Kenr., tr. viii., n. 43.

[150] Stat. Dioec. Nov., p. 13; Dioec. Boston., n. 217.

[151] C Prov. Quebec. II., an. 1854; ap. Coll. Lac., iii., p. 654.

[152] Supra, n. 654, 657.

In Ireland, however, bishops, by virtue of faculties granted them by the Holy See, Aug. 6, 1876, for ten years, can dispense parish priests from the obligation of saying Mass for their people on suppressed holidays, or those on which the faithful are no longer bound to hear Mass.[153] We may here add that bishops cannot compel, though they may exhort, pastors to furnish priests wishing to say Mass in their churches with those things which are necessary for the celebration, such as altar-wine and the like.[154] II. *Duty of Preaching.*—Rectors, even when they are not canonically irremovable, are bound, on Sundays and solemn feasts, either personally or, if lawfully hindered, by others, to preach to their people.[155] Sermons should be brief and plain—*i.e.*, adapted to the capacity of the parishioners. It is the common opinion that rectors who do not, either personally or through others, preach for one continuous month, or for three non-continuous months, in the year, sin grievously.[156] Sometimes, however, rectors may omit sermons in order to make up for them at a more opportune time. Thus, it is the custom in some parts of the United States to discontinue preaching for about two months every summer —namely, in July and August. Whether the excessive heat of these months can justify the above practice we leave to others to decide. III. *Duty of Catechising the Children.*— Pastors should also, on Sundays and festivals, instruct the children in the rudiments of the faith (*doctrina Christiana*), or, as it is called with us, in the catechism. In the United States, as elsewhere, this is done usually in Sunday-schools (*scholae doctrinae Christianae*), held, as a rule, every Sunday afternoon in the church or school-house.[157] The pastor, if for just cause hindered from personally holding Sunday-school, may appoint competent persons to take his place.

[153] Syn. Pl. Maynutiana. n. 69, 187; ib. in App., p. 300.
[154] Supra, 594 (2).
[155] C. Trid., sess. v., c. ii., d. R.
[156] Craiss., n. 1500.
[157] Phillips, l. c. p. 347.

In this country, as a rule, lay persons, male and female, act as Sunday-school teachers. Yet, owing to the difficulty of obtaining competent and painstaking lay teachers, our rectors are exhorted to personally hold, or at least superintend, Sunday-schools. This holds true especially where there are no parochial day-schools.[158] Moreover, children, with us, that have not yet made their first holy communion should, at stated times during the year (*v.g.*, during the Ember days), be instructed by the pastor, and thus prepared either for confession or for their first holy communion.[159] IV. *Duty relative to Catholic Day-Schools.*—Experience teaches that the public or common schools in the United States, owing to their very system, the text-books used, and the class of children frequenting them, in most cases endanger both the faith and morals of Catholic children sent to them.[160] If possible, therefore, a Catholic parochial day-school, where not merely secular knowledge, but also religious instruction, is imparted to the children, should be

[158] Conc. Pl. Balt. II., n. 435, 438. [159] Conc. Pl. Balt. II., n. 442

[160] Ib., n. 426–430; cfr. Syll., prop. 48. The *schema* (c. xv.) of the *Council* of the *Vatican* "De Ecclesia" proposed: "Inter sanctissimorum jurium violationes, quae nostra aetate . . . perpetrantur, illa est vel maxime perniciosa qua fraudulenti homines contendunt, *scholas omnes directioni ac arbitrio solius potestatis laicae subjiciendas esse.* . . . Quin eo usque progressi sunt, *ut ipsam Catholicam religionem a publica educatione arcere, atque universim scholas nullius professionis religiosae* [*v.g.*, the public schools in the United States], *sed litterarias tantummodo esse debere dicant.* Contra hujusmodi sanae doctrinae morumque corruptelas, ex ipso fine Ecclesiae . . . ab omnibus agnoscendum est jus et officium, quo ipsa (Ecclesia) pervigilat, ut juventus Catholica in primis vera fide et sanctis moribus rite instituatur. . . . Quare declaramus et docemus, jura praedicta atque officia ad Ecclesiam pertinere" . . . (Martin, Doc., p. 47). In connection with this *schema* a proposal (*postulatum*) was made in the *Vatican Council* that *all mixed schools* (called *common* or *public schools* in the United States), *without exception*, should be declared pernicious and condemnable by the Vatican Council (Martin, Arb., p. 76; Doc., p. 90). Cfr. Instructio De Schol. Publ. in Foeder. Stat. Americae Septentr., Nov. 24 1875, in Append., p. 432.

established in every congregation. The pastor should frequently visit it and see that it is efficiently managed.[161]

667.—IV. *Rights of Rectors respecting the Administration of the Temporalities of their Congregations.*—Church property is, both by ecclesiastical and divine right, exempt from the jurisdiction of the civil government. Hence, 1, laws enacted, *v.g.*, by legislatures in the United States, incapacitating Church corporations from acquiring more than a certain specified amount of property, are null and void.[162] 2. Church property should, as a rule, be exempt from taxation.[163] 3. Rulers confiscating such property as belongs to ecclesiastics by reason of their churches or benefices incur, *ipso facto*, excommunication, reserved at present, *speciali modo*, to the Pope, according to the *C. Ap. Sedis* of Pius IX.[164] Civil governments may, however, obtain, by concession of the Holy See—*v.g.*, by concordats—a certain share in the administration of Church property.

668. *What can or should a rector do in regard to the management of the temporalities of his congregation?* I. He should make an inventory of all goods belonging to the Church, a copy of which should be sent to the bishop to be filed in the episcopal archives; another should be preserved among the records of the parish. According to the *C. Ap. Sedis* of Pius IX., it is, generally speaking, forbidden, under pain of excommunication *latae sententiae*,[165] to alienate (*i.e.*, to sell, mortgage, lease for more than three years, etc.) Church property, movable or immovable[166]—or, as others express it, ecclesiastical immovables (*bona eccl. immobilia*) and valuable movables (*mobilia pretiosa*)[167]—without permission from the Holy See. We say, (*a*) *generally speaking;* for ecclesiastical

[161] Conc. Pl. Balt. II., n. 431. [163] Cfr. Konings, n. 620, 621.
[162] Phillips, l. c., p. 431. [164] Com., n. 64, 65; Avanz. (11), pp. 82, 83.
[165] Com , n. 129, 130. This excommunication, not being reserved, is absolvable by any confessor. [166] Phillips, l. c., p. 481.
[167] Ferraris, V. Alienare, art. i., n. 3.

things may be alienated without Papal leave—*v.g.*, if they are of little or no use, if recourse to Rome is difficult, etc. We say, (*b*) *of considerable value;* for things, both movable and immovable, worth, *v.g.*, only $25, or, according to some, $100, may be alienated by leave from the bishop.[168] Whether the above law, requiring the pontifical permission for the alienation of Church property, has, by virtue of custom to the contrary, ceased to be obligatory outside of Italy, seems a disputed question.[169] Does it obtain in the United States It does, with regard to all alienations involving a sum greater than $5000.[170] As, however, it would be difficult, considering our peculiar circumstances, to have recourse to the Holy See every time an alienation involving more than $5000 were to take place, the Holy See, by decree dated Sept. 25, 1885, granted to all our bishops, for ten years from the day of the promulgation of the *Third Plenary Council of Baltimore*, a dispensation from the obligation of obtaining the Papal permission. (Conc. Pl. Balt. III., p. ciii.) 3. Apart from these restrictions, the pastor is the administrator *ex officio* (*administr. natus*) of the property of his congregation. His rights, however, in this matter are always subordinate to the authority of the bishop, to whom belongs, as the *Third Plenary Council of Baltimore* (n. 272) says, the "*tutela et superior administratio* bonorum dioecesanorum," and whose duty, therefore, it is to see that in each church and ecclesiastical or pious establishment of his diocese, the church property shall be wisely administered. The rector must, therefore, give in a financial statement when required to do so, and, in general, observe the regulations of his ordinary concerning the administration of Church property, so long as they do not conflict with the general laws of the Church or the enactments of the Popes.[171] The *Third Plenary Council of Baltimore* (n. 272) enacts that all rectors in the United States shall

[168] Craiss., n. 1507, 2915.

[169] Craiss., n. 2922–2925.

[170] C. Pl. Balt. III., n. 20.

[171] Bouix, l. c., p. 600.

give the bishop a financial statement *every year*. II. *Can the management of the temporalities of parishes be committed to laymen—v.g., to trustees, as in the United States?* It can, provided these men are appointed by ecclesiastical authority. Rectors in the United States should not appoint their lay trustees without the consent of the bishop.[172] Again, apart from the ordinary expenditures, trustees (*aeditui*, *matricularii*, *procuratores*, *magistri fabricae*), with us, cannot, for any special object, make outlays exceeding $300 without the written permission of the bishop.[173] Moreover, lay trustees and others, with us, appropriating Church moneys or property to their own uses[174] incur, *ipso facto*, excommunication *simpliciter* reserved to the Pope according to the *C. Ap. Sedis* of Pius IX.[175] For other rights and duties of lay trustees; the mode of their appointment; their qualifications, meetings, etc., see the excellent regulations made by the *Third Plenary Council of Baltimore*, n. 284-287.

669.—V. *Several other Duties and Rights of Rectors.*—1. The Council of Trent requires them to keep two registers: one of baptisms (*liber baptismorum*), the other of marriages (*liber matrimoniorum*).[176] In the United States, as in most other countries, they are obliged, moreover, to keep a record of persons confirmed, and of interments;[177] the Roman Ritual also exhorts pastors to keep a *liber status animarum*—*i.e.*, a register containing the name and condition of each parishioner. Moreover, in some of our dioceses bishops require rectors to have a register of first communicants. 2. The *Third Plenary Council of Baltimore* (n. 275) also obliges our rectors to have a Day Book or Journal in which the receipts and expenses of the mission are carefully recorded and the assets and liabilities accurately noted.

[172] Conc. Pl. Balt. II., n. 198. [173] Ib., n. 201. [174] Ib., n. 197.
[175] Avanz. (34); Konings, n. 1740; Com., n. 65 (20).
[176] Phillips, l. c., p. 347. [177] Conc. Pl. Balt. II., n. 222.

# CHAPTER X.

## ASSISTANT PRIESTS, CHAPLAINS, AND CONFESSORS.

### ART. I.

### *Of Assistants of Rectors, and of Chaplains.*

670.—I. *Assistants or vicegerents* (*vicarii, curati, cooperatores, coadjutores, adjutores*) of rectors are chiefly of four kinds: 1. Those who are deputed to take charge of vacant parishes until a new rector is appointed. They are usually styled *oeconomi* or *administratores*. A parish, upon falling vacant, whether by the death, removal, or resignation of its pastor, should, pending the appointment of a new rector, be placed, as soon as possible, in charge of a vicar.[1] In the United States, as elsewhere, the appointment of these vicars belongs to the bishop. 2. Those who have charge of a parish during the absence of its rector; with us, as elsewhere, they are usually chosen by the pastor (before he goes away), with the consent of the bishop. Their salary is determined by the bishop. 3. Assistant priests proper (*vicarii parochiales*), or those priests who are appointed to assist those pastors who (*a*) actually reside and exercise the *cura* in their parishes, and (*b*) whose parishes are too large to be attended to by one priest. These alone can, strictly speaking, be called assistants, the two foregoing kinds being rather vicegerents than assistants. *De jure communi*, the appointment of these assistants belongs to pastors, not to bishops.[2] We say, *de jure communi;* for in

[1] Bouix, De Paroch., p. 630. [2] Ib., p. 434.

many countries—*v.g.*, in Canada,[3] Ireland,[4] the United States, etc.—they are now appointed by the bishops, though frequently at the suggestion of the rector to whom they are assigned. The bishop also determines their salary and changes them. Assistants have, by their very appointment as assistants, power to administer all the sacraments (except, of course, those of confirmation and order), unless their faculties are expressly limited.[5] 4. Those assistants (*coadjutores*) whom the bishop associates with rectors who, though otherwise of irreproachable character, are incapable of properly governing their parishes, either because they are too illiterate or afflicted with continual infirmity, bodily or mental. In this case the appointment of the assistants pertains, *jure com.*, to the bishop, not to the rector.[6]

671.—II. *Chaplains* (*capellani*) are priests attached to hospitals, prisons, and the like for the purpose of exercising the sacred ministry.[7] Their peculiar rights and duties are usually determined by the ordinary according to the requirements of the institutions or places with which they are connected. There are various kinds of chaplains—namely, chaplains (*a*) of nuns or convents, (*b*) of colleges or other similar institutions, (*c*) of hospitals, asylums, protectories, prisons, and the like, (*d*) of soldiers, etc. The Provincial Council of Dublin requires chaplains of soldiers, prisons, and other public institutions, at stated times, to inform the bishop of the moral and religious condition of these institutions.[8] I. *Chaplains of nuns or sisters* (*capellani monialium*) should be of mature age—*i.e.*, about forty years of age. II.

[3] C. Queb. II., an. 1854; ap. Coll. Lac., iii., 657.

[4] Syn. Pl. apud Maynooth, ann. 1875, n. 217.

[5] Craiss., n. 1519.

[6] A number of German bishops proposed, at the *Vatican Council*, that, in regard to pastors incapable of governing their parishes, bishops might be allowed not only to give them assistants with powers of administration, but also to transfer them against their will or retire them upon a suitable pension (Martin, Doc., p. 172).

[7] Devoti, l. i., tit. iii., n. 93.

[8] C. Prov. Dublin., an. 1853, ap. Coll. Lac., iii., p. 805.

*Military chaplains* (*capellani militum*), in order to be able to administer the sacraments of penance, Holy Eucharist, and Extreme Unction to soldiers in garrison or stationary camps (*v.g.*, to soldiers in the United States stationed in forts), must, as a rule, be approved by the bishop of the place where the quarters are situate, unless they have special faculties from the Holy See.[9] We say, *in garrison;* for chaplains of soldiers mobilized or actually engaged in military expeditions can administer the above sacraments,[10] and also—at least, where the Tridentine decree *Tametsi* is not published—the sacrament of matrimony, without the approbation of the bishops of the places where they may be. If soldiers in stationary camps have no military chaplain, they are to be considered *vagi*, and, consequently, fall under the authority of the pastor of the place where they are. III. *As regards chaplains of ships* (*capellani navium*), we subjoin the following decision[11] of the Holy See. *Dubium:* "An sacerdotes iter transmarinum suscepturi, facultate ob ordinario loci unde naves solvunt, donari possunt, ad excipiendas fidelium confessiónes, tempore navigationis?" *Responsum:* "Posse sacerdotes iter arripientes ab ordinariis locorum, unde naves solvunt adprobari, ita ut itinere perdurante, fidelium, secum navigantium confessiones valide ac licite excipere valeant, usque dum perveniant ad locum, ubi alius superior ecclesiasticus jurisdictione pollens constitutus sit."[12] From this decision it follows: 1. It is certain, at present, that priests—for instance, in the United States—embarking for Europe may be approved for confessions by the ordinary of the port whence the vessel starts or weighs anchor, and that, by virtue of this approbation, they may, even out of the case of necessity, administer the sacrament of penance to their

[9] Craiss., n. 1544.

[10] Konings, n. 1394, q. 15; cfr. Brief of Pius IX., July 6, 1875, ap. Analecta J. P., p. 1136 (14 ser.)

[11] C. S. O., March 17, 1869.

[12] Ap. Past. Blatt. St. Louis, Sept., 1876.

fellow-passengers during the voyage—*i.e.*, until they land at a port where another ordinary resides.[13] 2. Where a vessel or ocean steamer puts to sea from several ports—*v.g.*, first from New York, then from Boston—priests going aboard at New York may be approved by the ordinary of New York, and priests embarking in the same vessel at Boston by the ordinary of Boston.

## ART. II.

### *Of Confessors.*

#### § 1. *Of Confessors who are neither Canonical Parish Priests, nor Vicars-General, nor Regulars.*

672.—I. *Necessity of Approbation.*—Not only the *potestas ordinis*, but also the *potestas jurisdictionis*, is required in order that one may validly impart sacramental absolution. Hence, the minister of the sacrament of penance must (*a*) be a priest, (*b*) and have permission to hear confessions.[14] Canonical parish priests receive this jurisdiction by their very appointment as pastors; other priests must have the permission or approbation of the bishop. Strictly speaking, approbation (*approbatio*) differs from the giving of faculties (*collatio jurisdictionis*); the former is merely an authentic *declaration* by the ordinary that a priest is qualified to hear confessions; the latter confers the *power* itself *in actu* to do so. Still, as at present both are usually given simultaneously to secular priests, the two terms have come to be used synonymously. II. *By whom is the approbation or faculty to hear confessions to be given?* By the bishop of the place where the confessions are heard. Hence, priests approved for one diocese cannot hear in another by whose bishop they are not approved. The same holds of regular confessors, so far as their hearing secular persons (lay *or* clerical) is concerned. By the bishop we here

[13] Cfr. Craiss., n. 1519.

[14] Supra, n. 224.

mean also vicars-general, chapters, vicars-capitular (with us, administrators), and prelates having *jurisdictio episcopalis.* The bishop, even while out of his diocese, may give priests permission to hear in his diocese. III. *Withdrawal, etc., of Faculties.*—1. The bishop cannot lawfully (*a*) refuse, (*b*) or give but limited faculties, (*c*) or withdraw them, whether limited or unlimited, except for just cause. We said, *lawfully;* for the bishop may, even without cause, *validly* refuse, restrict, or withdraw faculties.[15] 2. Faculties conceded by the bishop without limit of time—*v.g.*, those granted *usque ad revocationem*—though revocable at any time, do not, however, of themselves lapse by the death or removal of the bishop by whom they were given.[16] This, however, does not hold of faculties conceded by bishops *ad beneplacitum nostrum* or *ad arbitrium nostrum.*[17]

## § 2. *Of Confessors who are Vicars-General and Canonical Parish Priests.*

673.—I. *Vicars-general* do not require an approbation or faculties from the bishop for confessions. For they have, by their very appointment to the vicar-generalship, *jurisdictio ordinaria* throughout the diocese.[18] II. *Canonical parish priests*, in like manner, do not need any approbation to hear their own parishioners,[19] even out of their parish or diocese. They cannot, however, out of their parishes, hear non-parishioners, unless they are expressly or tacitly approved by the bishop for this purpose. Rectors in the United States,[20] not being canonical parish priests, cannot hear confessions by virtue of their appointment as rectors, but must

[15] Konings, n. 1392, q. 4°, 5°, 6°.

[16] Ferraris, V. Approbatio, art. i., n. 10; Bouix, De Episc., t. ii., p. 246.

[17] Konings, 1393.

[18] Supra, n. 627, 628 (2).

[19] Or others coming to them in their parishes.

[20] As to California, see supra, n. 634.

be approved by the bishop. Rectors and assistants, with us, are, as a rule, approved for the whole diocese.

§ 3. *Of Confessors who are Regulars.*

674.—I. Regulars, unless they are canonical parish priests, to be able to hear seculars, must, like secular priests, be approved by the bishop of the place where they hear the confessions. We say, *seculars;* for, so far as concerns their hearing (male) members of their own order, they are approved, not by the bishop, but by their own superiors.[21] It is, however, the common opinion that although they must be approved by the bishop or their prelate, they nevertheless receive jurisdiction directly from the Pope. II. The bishop cannot, without just cause, lawfully, though he may validly, refuse regulars faculties to hear *seculars* (lay *or* clerical). He may limit such faculties as to time, place, or persons—at least, in the case of regulars who might be somewhat more competent. We say, *at least;* for, according to Bouix,[22] a bishop, upon examining regulars prior to approving them for seculars, and finding them entirely qualified (*generaliter idoneos*) to hear confessions, must give them unlimited faculties. Benedict XIV., however, according to Bouix, holds the contrary. Again, the bishop may, as a rule, withdraw from individual regulars faculties to hear lay persons. We say, 1, *as a rule;* for if he himself has, upon previous examination, given them unlimited faculties, he cannot himself deprive them of, or even restrict, their faculties, save "ex *nova* superveniente causa *confessiones concernente.*"[23] We say, 2, *from individual,* etc.; for he cannot, without the consent of the Holy See, withdraw faculties from all the members of a religious community, except in countries far away from the Holy See, and then only *ex gravissima causa.* III. *Can regulars sometimes confess to priests not belonging to their order?* Professed members of re

[21] Supra, n. 618. [22] De Jur. Reg., t. ii., p. 230. [23] Bouix, l. c., p. 243.

ligious orders should, as a rule, confess to confessors of their own order. We say, first, *professed*, etc.; for novices and lay servants living in the monastery can go both to the religious confessors of the monastery who are not approved by the bishop to hear seculars, and to extraneous priests having faculties from the bishop to hear seculars. We say, secondly, *as a rule;* for, 1, in time of jubilee they can, without permission from their superiors, confess to any priest approved by the bishop, and be absolved by him, even, as a rule, from censures inflicted by the regular superior.[24] 2. In case of necessity—*v.g.*, if, while travelling or out of the monastery, in order to preach, give missions, and the like,[25] they have no confessor of their own order within reach—they may, by the presumptive permission of their superior, confess to any competent priest, regular or secular, even though not at all approved for confessions.[26] Observe, by regulars we here mean only professed members of orders approved by the Holy See—nay, only such as are exempt from episcopal authority.

§ 4. *Confessors of Nuns, especially in the United States.*

675. *De jure communi*, a *special* approbation is required to validly hear nuns proper—that is, nuns having solemn vows and observing Papal (or canonical) enclosure. We say, *a special approbation;* hence, (*a*) priests, secular or regular, approved by bishops in the ordinary manner only, (*b*) and even canonical parish priests, cannot, unless *specially* approved for nuns, hear them.[27] By whom is this *special* approbation to be given? By the bishop of the place where the nuns are heard. Observe, however, that if the nuns are subject to regular prelates, the *designation* of their confessor belongs to the regular prelate, the *approbation proper* to the

[24] Varc., p. 195. [25] Ferraris, l. c., art. ii., n. 9–15.

[26] Bouix, l. c., p. 252. Capuchins, however, can, in the above case, confess to priests only who are approved by the bishop of the place.

[27] Ferraris, l. c., art. iii., n. 1–4.

bishop; if they are subject to bishops or directly to the Holy See, the appointment in full—that is, the designation as well as the approbation—pertains to the bishop. As a rule, but one confessor should be appointed for a convent. The ordinary confessor, even of nuns, having but simple vows, can be appointed neither for a longer nor a shorter period than three years. But in the United States and other places where it is customary to appoint them without limit of time, their approbation is valid until withdrawn by word or deed.[28] A confessor appointed for one convent cannot, unless he is approved for nuns in general, validly hear nuns in another convent. Extraordinary confessors should be given nuns two or three times a year. A confessor appointed to act *once only* as *extraordinarius* cannot do so a second time, unless he is reappointed.[29]

676. *Confessors of Nuns or Sisters in the United States.*—What has been thus far said applies chiefly to nuns bound by solemn vows. We therefore ask: Is a special approbation necessary to hear the confessions of sisters or nuns in the United States? We premise: All our sisters, with the exception of those of several houses of the Visitation, or where a special Papal rescript has been obtained, have but simple vows. We now answer: 1. It is certain that, *de jure particulari*, a special approbation may be needed. In other words, our bishops may ordain that pastors and confessors in general cannot validly hear sisters without a *special* approbation. 2. But is such special approbation requisite with us, *de jure communi?* There are two opinions. Kenrick[30] holds the affirmative. Others, who maintain the negative, contend that everything depends upon the will of the bishop; that, nevertheless, it is the *desire* of the Holy See that *special* confessors be appointed for nuns having but simple vows.[31]

[28] Kenr., tr. xviii., 139; Gury., t. ii., n. 565.

[29] Bouix, l. c., p. 258; Ferr., l. c., n. 8, 9

[30] L. c., n. 142; Bouix, De Episc., t. ii., p. 255.

[31] Konings, n. 1399, q. 2.

☞ As a matter of fact, prior to the *Third Plenary Council of Baltimore* (Nov. 1884), in some of our dioceses a *special* approbation was required; in others, not. The *Third Plenary Council of Baltimore* (n. 96, 97), wishing to introduce uniformity of discipline in this matter, lays down the following regulations to be observed for the future all over the United States:

1. "Neque negligant episcopi, pro sororibus etiam simplicium votorum, sequi praescriptionem ecclesiae quae vult ut pro sanctimonialibus ab ordinario vel aliis superioribus tum confessarius ordinarius constituatur tum aliquoties per annum extraordinarius deputetur." (Cf. Conc. Pl. Balt. II., n. 417.)

2. "Confessarius ordinarius nisi aliter necessitas suadeat, *ultra tres annos pro eadem communitate munere suo non fungatur.*"[33] Facultates necessarias ad confirmationem confessarii, ratione nostrarum conditionum, impetrabunt episcopi a S. Congregatione. Extraordinarius saltem bis vel ter in anno ad confessiones omnium excipiendas sese praesentabit; ast etiam aliquando particularibus monialibus saepius eum postulantibus non denegetur."

These regulations, so far as regards the ordinary confessor, apply chiefly to sisters *living in their convent or mother-house.* For, where sisters or nuns with us teach in parochial schools, and consequently live near the school and out of their convent, the rector of the church to which they are attached is generally regarded by virtue of his office as their ordinary confessor. In this case, the rule that the ordinary confessor should be changed every three years (now six years) does not hold, at least with regard to sisters, whose rule allows them to go outside to any priest, as sisters of charity. Nor is it necessary that it should hold. For, these sisters attached to parochial schools are generally changed every two or three years, and are thus given a new ordinary

[33] The Holy See has recently extended this space of *three* years to *six* years.

confessor in the person of the rector of the new place to which they are transferred.

Again, as all sisters,[32] with us (since there is no special Papal rescript exempting any of them), are subject to the bishops of the dioceses where they are, their confessors, ordinary and extraordinary, are designated as well as approved solely by the bishop of the place where the confessions are heard. Hence, the regular prelates (*i.e.*, abbots, generals, provincials) of the Benedictine, Dominican, and Franciscan orders in the United States cannot present to bishops the confessors respectively of Benedictine, Dominican, and Franciscan sisters in this country; *à fortiori*, neither can these superiors[34] themselves hear such nuns without episcopal approbation.

§ 5. *Of Confessors in relation to Reserved Cases—Of Reservations and Censures, as in force at present, according to "Const. Ap. Sedis" of Pope Pius IX., issued Oct.* 12, 1869 *—Special Powers of Bishops in the United States respecting these Reservations.*

677. *Definition.*—By reserved cases (*casus reservati*) are meant certain more grievous sins from which ordinary or inferior confessors cannot absolve without a *special* approba-

[31] Konings, n 1399, q. 2.

[32] In the diocese of Boston no special approbation is needed to hear Sisters of Charity; nor in the archdiocese of Baltimore.

[33] As Sisters of the orders of SS. Benedict, Dominic, etc., with us, have but simple vows, they are subject not to the regular prelates of the above orders respectively, but to bishops. The sixteenth ch. of the *schema* (relative to religious) of the *Vatican Council* proposed that all sisters with but simple vows, even though under a superioress-general, should be entirely subject to bishops, except in regard to their constitution as approved by Rome (Mart., Arb., p. 127). Again, the above nuns are not bound by the law of Papal enclosure But the c. vi. of the *schema* "de clausura" of the *Vatican Council* proposed to enjoin enclosure *in a moderate form* on all nuns having but simple vows (Mart, Doc., p. 238).

[34] Whether regular prelates can, without episcopal approbation, hear nuns, *subject to themselves*, is a disputed question (Bouix, De Jur. Reg., t. ii., p. 257). No nuns in the United States are subject to regular prelates.

tion. I. *Conditions of Reservations.*—As a rule, no sin is reserved unless it is (*a*) mortal, (*b*) external, (*c*) certain, (*d*) complete, (*e*) committed by adults.[25] We say, 1, *mortal;* for, according to the Council of Trent, only *atrociora quaedam et graviora crimina* should be reserved. The sin should be mortal, not only internally but also externally. 2. *External,* the Church sometimes reserves *occult,*[26] but never merely *internal,* sins. 3. *Certain;* hence, no reservation is incurred where it is doubtful (*a*) whether the sin was committed or whether it is mortal internally and externally (*dubium facti*); (*b*) whether it is reserved (*dubium juris*). 4. *Complete;* thus, where murder is reserved, a person merely inflicting wounds, even though serious, does not incur the reservation, unless the contrary is expressly stated. 5. *Committed by adults;* hence, boys under fourteen and girls under twelve years of age do not, except where the contrary is stated, incur reservations. This fifth condition, however, is not admitted by all. II. *Who can reserve cases?* The prelates of the Church only—that is, those who have jurisdiction both *in foro interno* and *externo;* in other words, the Pope for the entire Church, the bishop for his diocese, superiors of religious communities for such communities. Accordingly, reserved cases are divided into Papal, episcopal, and regular. Regular prelates, however, in order to be able to reserve more than the eleven cases permitted by the *jus commune,* must have the consent of the general chapter of the whole order if the reservation is to extend over the entire order, and of the provincial chapter if only over the province.[27] *Note.*—Not only professed members (whether priests or lay-brothers) of exempt orders, but also their novices, candidates from the time they are accepted for the order, and servants living in the monastery, are, as a rule, exempt from episcopal reservations.

678.—III. *Does ignorance of the censure or reservation pre-*

[25] Craiss., n. 1596–1601. [26] Cfr. supra, n. 580. [27] Varc., pp. 739, 743.

*vent its being incurred?* As to censures, it does. As to reservations, we distinguish: The sin is reserved, either with or without censure. If it is reserved without censure, the question is controverted. If with censure, we must again distinguish: The case is reserved either to the Pope[38] or to bishops. It is certain that ignorance exempts from the former. Does it also exempt from the latter? The question is disputed. According to Varceno[39] and others, it does, if the case is reserved to bishops by the *jus commune—v.g.*, the three excommunications reserved to bishops in the *Const. Ap. Sedis* of Pope Pius IX.; but if the sin is reserved by the bishop himself, whether in or out of synod, ignorance excuses merely from the censure, not from the reservation. Others, however, hold that ignorance excuses from *all* reservations, whether Papal or episcopal, whether with or without censure, chiefly because reservations are always penal.[40]

679. *Who can absolve from reserved cases?* 1. The person reserving; 2, his superior or successor; 3, those delegated by the persons just mentioned; 4, sometimes inferiors. It is certain,[41] according to the *C. Ap. Sedis* of Pius IX., that regulars can no longer absolve from cases reserved to bishops by the *jus commune* (*v.g.*, by the *C. Ap. Sedis*).[42] I. *Can a person who has incurred a reservation in his own diocese or place of domicile confess in another diocese where the sin is not reserved, and there be absolved by any ordinary confessor?* There is question of cases reserved, either with or without censure. As to the latter, we reply in the affirmative, with the proviso already mentioned.[43] As to the former (*i.e.*, cases with censure), we distinguish: The censures are reserved either *ab homine*, and that *per sententiam particularem*, or *a jure*. As to the first, we reply negatively, such censures being absolvable by the person only who inflicted them, or

[38] See infra, n. 681. [39] P. 744. [40] Baller. ad Gury., t. ii., n. 711
[41] Cfr. Craiss., n. 1630. [42] Cfr. supra, n. 582. [43] Supra n. 582.

by his successor, superior, or one delegated by them. As to the second, the question is disputed. Practically, the affirmative may, by reason of custom, be acted upon, provided the penitent does not act chiefly *in fraudem legis*.[44] II. *Can an ordinary confessor, out of the above case, sometimes absolve from reservations?* He can, in two cases: 1. *In articulo* or *periculo mortis*. In this case he can absolve not only from reserved sins, but also from reserved censures, and that even though the superior or confessor having the requisite special faculties be present or within reach.[45] Nay, in default of an approved priest, *any priest* can so absolve. Now, is a penitent thus absolved obliged, in case he survives, to present himself, as soon as convenient after his convalescence, to the superior or confessor having the requisite special faculties? If the case is reserved without censure, he is not; if with censure, he is, though at present, according to Varceno, only in case he has incurred one of the fourteen censures reserved, *speciali modo*, to the Roman Pontiff by our Holy Father Pius IX. 2. *In case of necessity;* thus, if it is impossible, even by letter, to recur to the superior, and there is a pressing cause—*v.g.*, danger of scandal or loss of good name, arising, *v.g.*, out of a priest's omitting to say Mass—any ordinary confessor can absolve indirectly from cases reserved to the bishop, or even to the Pope if the bishop cannot be applied to.[46] We say, indirectly; hence, the penitent must afterwards present himself, when able to do so, to a confessor having power to absolve from the reservation (*practically*, to the same confessor, after the latter has obtained the necessary faculties from the bishop).[47]

680. In how many ways can cases be reserved? In two: 1. *Ratione sui tantum*—that is, without censure, and merely because of the sin. 2. *Ratione censurae*—that is, with and on

[44] Craiss., 1612; Varc., p. 746.
[45] Craiss., 1618.
[46] Varc., p. 748.
[47] Konings, n. 1403.

account of censures. Observe, most episcopal cases are reserved without censure; nearly all Papal cases, with censure.

681. *Censures reserved at present to the Sovereign Pontiff.*[48]—I. *How many cases are now reserved to the Pope without censure?* These two: 1. If any one (male or female), either personally or through others, falsely accuses an innocent priest of the *crimen sollicitationis* before ecclesiastical judges; 2, if a person accepts from *religious proper* of either sex gifts worth more than ten Roman *scudi* (dollars). Ferraris, however, holds that this case is not reserved to the Pope. Moreover, a decision of the S. Poenit., March 15, 1861, assumes it to be reserved merely to bishops.[49] Observe, not the religious who makes, but the person who accepts, the presents incurs the reservation. Again, religious proper of both sexes may, with leave from their superiors, make donations for various reasons—*v.g.*, in token of benevolence, to assist needy relatives; and persons accepting gifts thus proffered do not incur the reservation.[50] II. *How many cases are at present reserved to the Pope with censure* (*ratione censurae*)? We premise: At the present day, according to the *C. Ap. Sedis* of Pius IX., by which the ecclesiastical censures *latae sententiae* were limited, the cases reserved to the Sovereign Pontiff, with censure (namely, excommunication), are of two kinds: 1. Some are reserved *speciali modo*—that is, in such manner as to be absolvable neither by bishops (unless they obtain, like bishops in the United States, *special and express* faculties from Rome to do so), nor by others howsoever

[48] A number of French and German bishops submitted proposals at the *Vatican Council* requesting that the cases reserved to the Pope, with or without censure, be reduced to as small a number as possible, if not altogether abolished, and that each new Pontiff, in the beginning of his pontificate, should deign to publish to the entire Church a list of cases he intended to reserve to himself, with the provision that all reservations of former Popes not contained in this list should be considered as, *eo ipso*, abrogated (Martin, Arb., p. 106; Doc., pp. 155, 171).

[49] Craiss., n. 1603.

[50] Varc., p. 740

otherwise privileged.[61] 2. Others are reserved *simpliciter*—that is, in such manner that bishops as Papal delegates *in occultis*, where the Council of Trent is received, and others authorized in a general manner to absolve from Papal cases, may absolve from them.[62] We now answer: At present only fourteen cases are reserved to the Pope,[63] *speciali modo* (namely, twelve in the *C. Ap. Sedis*, Oct. 12, 1869, and two respectively by the *C. Romanus Pontifex*, Aug. 28, 1873, and decree *S. Poenit.*, Aug. 4, 1876), and twenty *simpliciter* (namely, eighteen in the *C. Ap. Sedis* and two respectively by decree C. S. O., Dec. 4, 1872, and *Encycl.* of Pope Pius IX., Nov. 1, 1870).[64]

682. *Cases reserved to Bishops at present.*—They are, as we have shown,[65] of two kinds: Some are reserved by bishops themselves; others by or in the *jus commune*—*v.g.*, in the *C. Ap. Sedis.* Now, the *jus commune* reserves cases to bishops (*a*) either in a general manner, (*b*) or specifically—*i.e.*, by name. I. *What cases are at present reserved in a general way to bishops by the jus commune?* 1. All cases to which an excommunication *simpliciter* reserved to the Pope is attached in the *C. Ap. Sedis* of Pius IX., whenever they are occult.[66] We say, *simpliciter reserved*, etc.; for bishops cannot, by virtue of the *jus commune*, absolve from any of the above four teen cases reserved, *speciali modo*, to the Pope, even when they are occult. 2. All cases whatever reserved to the Sovereign Pontiff, even though *speciali modo* in and out of the *C. Ap. Sedis* of Pius IX., and even though public or notorious, when the delinquent is canonically hindered from presenting himself in person to the Holy See. We say, *in person;* for he is not obliged to recur to the Holy See by letter or proxy.[67] Now, what persons are considered as canonically unable to go to Rome? The inability is either permanent or temporary. It is permanent when it lasts ten,

[61] C. Ap. Sedis, § *A quibus;* Com. Ed. Mauri, n. 172.
[62] Varc., pp. 741, 940. [63] Konings, n. 1717, ed. 3ia. [64] Ib., n. 1732.
[65] Supra, n. 582. [66] Craiss., n. 1649. [67] Varc., p. 122.

or, according to some, five, years; it is temporary when it continues less than ten or five years (though not if it lasts less than six months). The following persons are said to be permanently hindered from going to Rome: Women, except where they are expressly marked with censure, as nuns violating enclosure; sexagenarians; servants; those who are poor, labor under chronic and serious diseases, or are condemned to perpetual imprisonment; those who are obliged to support a family or administer its property; those who fill a public position which they cannot relinquish without grave or public detriment; religious; boys under the age of puberty, even though they ask for absolution after they attain to the age of puberty; sons under the control of their parents; seminarians, soldiers, etc.; finally, all others who cannot go to Rome without grave loss, temporal or spiritual. *Note.*—Those who are permanently unable to present themselves to the Holy See can be absolved absolutely (so that they need not afterwards, even when they become able, go to Rome) by the bishop or his delegate; those, on the other hand, who are but temporarily unable, can be absolved by the bishop or confessor authorized by him, even out of the case of necessity, though only conditionally or *ad reincidentiam*, so that if they do not, when able, present themselves to the Holy See, they, *ipso facto*, reincur the censure."[*] Again, as bishops can, *de jure communi*, absolve from the above Papal cases, they can also empower their priests to do so.

683.—II. *What cases are at present specifically—i.e., by name—reserved to bishops in the jus commune?* The *jus commune—i.e.*, for the purposes concerned, the *C. Ap. Sedis* of Pope Pius IX.—declares the following persons subject to excommunication *latae sententiae* reserved to bishops or ordinaries: "1. Clericos in sacris constitutos, vel regulares aut moniales post votum solemne castitatis, matrimonium con-

[*] Com. Ed. Mauri, n. 167, 168, 173.

trahere praesumentes; necnon omnes cum aliqua ex praedictis personis matrimonium contrahere praesumentes. 2. Procurantes abortum, effectu secuto. 3. Litteris apostolicis falsis scienter utentes, vel crimini ea in re cooperantes." These three cases only are at present reserved by name to bishops in the *jus commune*.[59]

684. *What special powers of absolving from Papal cases have bishops in the United States by virtue of their faculties from the Holy See?*[60] They have the power "*absolvendi ab omnibus censuris in C. Ap. Sedis, dd.* 12 *Oct.*, 1869, ***Romano Pontifici etiam speciali modo reservatis,*** *excepta absolutione complicis* ***in*** *peccato turpi*."[61] This Papal indult includes all cases whatever reserved to the Sovereign Pontiff in the *C. Ap. Sedis*, except the faculty of absolving, 1, one's accomplice *in peccato turpi;* 2, a confessor who dares to absolve his partner *in peccato turpi*,[62] and that even though the case be occult; 3, a person,

[59] Craiss., n. 1653.

[60] In the *Vatican Council* several proposals were made by a number of German and French bishops to the effect that the faculties of absolving from Papal reservations, dispensing from impediments, etc., which the Holy See usually communicates to bishops only for a certain time—*v.g.*, for three, five, or ten years—or only for a determinate number of cases, be henceforward delegated to them *for the whole term of their episcopate* (Martin, Arbeiten, p. 95; Doc., pp. 149, 171).

[61] Fac., form. i, n. 16.

[62] However. Pope Pius IX., by decree of the S. C. Prop. Fid., Jan 24, 1868, granted this faculty (namely, *absolvendi a censuris et poenis ecclesiasticis sacerdotes, qui personae complicis in peccato turpi confessiones excipere, eamque absolvere ausi fuerint, et cum iisdem super irregularita e a violatione dictarum censurarum quomodocunque contracta dispensandi*) to every archbishop, bishop, and vicar-apostolic of the United States, 1, but only for fifteen cases; 2, and exercisable by each in his diocese or vicariate, either personally or through his vicar-general, or through worthy confessors; 3, to be deputed by himself or his vicar-general *specially* for this purpose; 4, and with the express mention of the Papal authorization; 5, in favor only of such priests as cannot, without evident danger of causing scandal among the faithful, observe the censures which they incurred by absolving their accomplices; 6, on condition (*a*) that the priests thus absolved and dispensed with shall, within two months, or some other suitable time, to be fixed by the dispenser, either directly or

male or female, who falsely accuses a priest of *sollicitatio* in confession; 4, from heresy, apostasy from the faith, and schism in the cases already mentioned.[63] Observe, Pope Pius IX., by decrees of the S. U. Inq., respectively dated June 17, 1866, and April 4, 1871, ordained that in all Papal concessions whatever, empowering bishops (even of the United States) to absolve from cases reserved to the Holy See even *modo speciali*, the power to absolve from the cases under n. 2 and 3 should always be excepted, and that even expressly as to case n. 2. Hence, the latter case is said to be reserved to the Pope *modo specialissimo*.[64] From what has been said, it is evident that our bishops can, except in the four cases given, absolve absolutely (so that the penitent need never afterward present himself to the Holy See) from all cases or excommunications whatever, whether reserved *simpliciter* or *modo speciali* to the Pope in or out of the *C. Ap. Sedis*, even when they are notorious—nay, even where the delinquent can go to Rome. They can—in fact, usually do—communicate these faculties to their priests.[65] Later on (in a future work), when we come to treat of censures, we shall explain in detail the *C. Ap. Sedis* of Pius IX.

through their confessors, and without mentioning the names, recur to the S. C. Prop. Fid. and state the number of their accomplices and how often they absolved from the sin of complicity; (*b*) and that they be bound to obey the orders of the aforesaid S. C. in this matter, on pain of otherwise reincurring the same censures and penalties; 7. they should also receive a suitable penance, and be commanded to abstain altogether from hearing the confessions of their accomplices; finally, all else, as required by law, should be enjoined (Konings, p. lxxi.; Conc. Pl. Balt. II., p. 146, decr. i.)

[63] Supra, n. 581 (notes 277, 278). [64] Avanz., p. 18. [65] Fac., l. c., n. 28

## PART IV.

### *THE NEW DIOCESAN CONSULTORS IN THE UNITED STATES, ACCORDING TO THE "THIRD PLENARY COUNCIL OF BALTIMORE."* *

HAVING spoken of the rights and duties of bishops, priests, and other ecclesiastics, it but remains to treat briefly of the rights and duties of those ecclesiastics who are the *official and legally constituted advisers* of the bishop in the government of the diocese, also in the United States. According to the general law of the Church, as still in full force, every diocese must have a cathedral chapter. This chapter is constituted by law the cabinet or advisory board of the bishop. In the United States there are as yet no cathedral chapters. However, the *Third Plenary Council of Baltimore* decreed that in every diocese a certain number of diocesan consultors should be appointed, who should be the official advisers of the bishop, and who should therefore take the place of cathedral chapters, until the latter could be properly established. We shall here inquire (*a*) into the origin and history of bishops' councils, both here and elsewhere; (*b*) their nature and organization; (*c*) their rights and duties.

* This treatise is entirely new matter, written for the sixth edition of this work.

# CHAPTER I.

## HISTORY, ORGANIZATION, ETC., OF CHAPTERS OR BISHOPS' COUNCILS, ALSO IN THE U. S.

### ART. I.

### *Origin and History of Bishops' Councils, also in the United States.*

I. *General History of Bishops' Councils.*—Bishops, even when the apostles were as yet living, associated with themselves ecclesiastics to assist them in their sacred duties. In the first three centuries of the Church, twelve priests and seven deacons formed the superior clergy in each diocese, and were entitled to be consulted by the bishop in the government of the diocese and to administer it when vacant. They made up the *council and senate* of the bishop, and together with him governed the diocese. Bishops' councils, then, are of *apostolic institution.* For, as Nardi says, these Episcopal councils or senates were instituted *in the time of the apostles, have existed uninterruptedly down to our own day, and will exist to the end of time, bearing as they do the seal of apostolicity, so dear to the Church.*[1] Formerly they were styled *Presbyteria, Coronae, Consessus, Concilia,* and *Senatus;* now they are called *cathedral chapters.*[2]

II. *History of Bishops' Councils in the United States.*—The Second Plenary Council of Baltimore, held in 1866, *exhorted* bishops to appoint priests who should be the advisers of the bishop in the government of the diocese,[3] and *commended* the

[1] See our article on Cathedral Chapters in the A. C. Q. R., Oct. 1878, p. 710 sq. [2] Bouix, De Capit., p. 7. [3] Conc. Pl. Balt. II, n. 70, 71.

practice of calling them together once every month, on a stated day.[4] Accordingly, in nearly every diocese, bishops' councils were established. However, owing perhaps to the fact tnat the Second Plenary Council merely *advised* the establishment of these bodies, and that it did not define their particular duties, they were bishops' councils, as a rule, only in name.[5] To remedy this inconvenience, the *Third Plenary Council of Baltimore* decreed and commanded that in every diocese a certain number of worthy and learned priests should be appointed diocesan consultors, whose advice the bishop should be bound to take in certain cases expressly enumerated.[6]

## Art. II.

### *Nature and Organization of Cathedral Chapters, and of Bishops' Councils in the United States.*

I. *Definition.*—Cathedral chapters (*capitula cathedralia*), in the canonical sense of the term, are bodies of ecclesiastics forming ecclesiastical corporations (*collegia*), subject indeed to the jurisdiction of the bishop, but nevertheless constituting a separate body or association, under the direction of their own president or dean, enjoying special privileges, and established for the purpose of *assisting the bishop, while alive, in the government of the diocese, and of taking his place and*

[4] Conc. Pl. Balt. II., n. 71.

[5] In order to introduce gradually among us the general law of the Church respecting cathedral chapters proper, the Propaganda, in the conferences held at Rome. in 1883, with our archbishops, proposed to establish cathedral chapters in the United States, not, indeed, in the full canonical sense of the term, but yet in the manner in which they exist in England, Ireland, and Holland, namely, as corporate bodies, etc. To this proposal our prelates objected. The matter was finally arranged thus: The Cardinals of the Propaganda decided that in the *Third Plenary Council* the establishment of cathedral chapters should not be excluded; and that meanwhile Episcopal consultors should be appointed, with certain defined rights and duties. See C. P. Balt. III., n. 17, 18.

[6] C. Pl. Balt. III., n. 17, 18, 19, 20.

*governing the diocese when the see is vacant.*[7] This definition expresses in general the *nature and organization*, as well as the *rights and duties*, of cathedral chapters. In the present article we shall speak of the former; in the next, of the latter.

II. *Organization of Cathedral Chapters.*—Cathedral chapters, as constituted in accordance with the general law of the Church, are *moral bodies* or *ecclesiastical corporations.* This is expressed in our definition. Now every association or moral body must have a head, *i.e.*, one who presides over it. Cathedral chapters have, so to say, a twofold corporate existence: one as the *senate* of the bishop; the other, as a corporate body of its own. In its capacity of *senate* and *council* of the bishop, the chapter forms a moral body *which is one with the bishop*, and of which therefore the bishop is the head and noblest member.[8] Hence, in all matters relating to the government of the diocese[9] the bishop acts as the president of the chapter, and therefore convenes it and presides over its meetings.[10]

But in its capacity as a body of its own, it is distinct from though not independent of the bishop, and has, like every other society or ecclesiastical corporation, the right to make its own rules and regulations, and be presided over by its own officers, in all matters relating to its own internal *régime* and not to diocesan affairs. Consequently, of the chapter, viewed under this aspect, the bishop is not the head, nay, not even a member. Hence he has no decisive vote in purely capitular matters. Moreover, the chapter has (in its second capacity) its own presiding officer or head, who is usually called dean or provost.[11] When the latter dies or is absent, the older canon, as a rule, becomes the head or president of the chapter for the time being.

[7] Cf. Ferraris, v. Capitulum, art. i., Nov. Add., n. 1.

[8] Bouix, De Capit., p. 60.

[9] Ib., p. 174.

[10] Conc. Trid., sess. xxv., c. 6, De Ref.

[11] Bouix, l. c., p. 60.

III. *Organization of Diocesan Consultors in the United States.*—Our bishops' councils, as established by the *Third Plenary Council of Baltimore* (n. 17, 18) have no corporate existence, that is, they have no organization as a separate body, and hence no presiding officer or other officials of their own. The bishop is their sole head, and convenes them *four times a year*, or, where this cannot be done, *at least twice a year*, at stated periods,[12] and always presides at their meetings. Extraordinary meetings are held as often as occasion requires.

## Art. III.

### *Appointment and Removal of Canons and of Diocesan Consultors in the United States.*

I. *Appointment.*—Cathedral chapters, in the full canonical sense of the term, can be erected only by the Holy See. The Pope always proceeds to the establishment of these chapters simultaneously with the creation of the bishopric, or as soon thereafter as the state of dioceses admits of them.[13] By the common law of the Church, as at present construed, the appointment of canons of cathedral chapters belongs jointly or simultaneously to the bishop and the chapter.[14] However, as in practice this mode of appointment is surrounded by difficulties, it has become customary in various dioceses for the bishop and the chapter to make the appointment by turns or alternately, so that each in turn makes the appointment independently upon the other.

II. *Appointment of Consultors in the United States.*—The *Third Plenary Council of Baltimore* ordains that each diocese shall have *six*, or at least *four*, consultors; that where this number can in no wise be had, there shall be *at least two.*[15] As to the mode of their appointment, this Council enacts

[12] Conc. Pl. Balt. III., n. 21. [13] Prael. S. Sulp., n. 384.

[14] This joint right of appointment is called *jus collationis simultaneae.*

[15] C. Pl. Balt. III., n. 18.

that one half of the above number shall be appointed solely by the bishop; the other half also by the bishop, though only on the nomination made by the entire clergy, in the manner laid down by the *Council*.[16] The diocesan consultors, thus properly appointed, hold their position *for three years*, after which they must be either reappointed or others chosen in their stead in the same manner as just described.[17] If, however, this term of three years expires during the time when the episcopal see is vacant, the consultors will remain in office until the accession of the new bishop, who will be bound to proceed within six months from the day of his consecration to the new appointment of the consultors in the manner above stated.[18] Finally, where, during the above term of three years, a consultor either dies, or resigns, or is removed, the bishop has the right and duty to appoint another one, though only with the advice of the other consultors.[19] As will be seen, the mode of appointment of our diocesan consultors resembles somewhat that of canons of cathedral chapters, as above set forth.

III. *Removal of Canons, and of our Consultors.*—Canons proper of cathedral chapters hold their position for life, and are therefore canonically irremovable (*inamovibiles, perpetui*). Consequently they cannot be deprived of their office of canons, save for crime, specified in law and by canonical trial.[20]

*Our diocesan consultors*, as we have seen, are appointed only for *three years*. During this term of office they cannot be removed, against their will, except for legitimate and just cause, and by the advice of the other consultors. What constitutes a legitimate and just cause for removal? The answer is given by the *Third Plenary Council of Baltimore*, n. 21. From this it will be seen that they can be removed from the office of consultor also for causes other than crimes, and without a trial in the proper sense of the term, though not without a previous investigation.

[16] C. Pl. Balt. III., n. 19. [17] Ib., n. 21. [18] C. Pl. Balt. III., n. 21.
[19] Ib. [20] Prael. S. Sulp., vol. ii., p. 169, n. 419.

## CHAPTER II.

### RIGHTS AND DUTIES OF OUR DIOCESAN CONSULTORS, SEDE PLENA.

I. Where there are cathedral chapters in the canonical sense of the term, the bishop is bound, by the general law of the Church, to proceed in some matters *with the advice*, and in others *with the consent*, of the cathedral chapter; and if he fails to act with this advice or consent, where the law prescribes it, his acts are *null and void.* All this follows from the very nature of cathedral chapters. For, as was shown, they constitute the *senate* and *council* of the bishop in the administration of the diocese. He is the head, they are the members, of the diocesan governing body. Now it is unbecoming for the head to act without the members.[1]

II. *Our diocesan councils*, as established by the *Third Plenary Council of Baltimore*, are, like cathedral chapters, the official and legal senate and council of the bishop in relation to the government of the diocese. They are to take the place of cathedral chapters until the latter can be properly established. Wherefore *the Third Plenary Council* enacts that the bishop shall be bound to take the *advice* of his consultors in a number of cases expressly stated by it. We say *advice;* for the council does not oblige the bishop to act *with the consent* of his consultors in any case whatever.

Observe, however, that the bishop is indeed bound to ask this advice in the cases enumerated by the *Third Plenary Council of Baltimore* (n. 20, 33, 37, 38, vii.; 273, 294), *under*

[1] Alexander III., cap. 4, 5, De his, quae fiunt (iii., 10).

*pain of invalidity of his acts;* yet he is not bound to follow it. For, when the law obliges the bishop merely to act with the advice of his council or chapter, it binds him, it is true, to *ask* this advice, and *makes* his acts void if he fails to do so; but it does not require him to *follow* the advice except when the contrary is expressly stated.[2] Thus Reiffenstuel teaches: "Unde quae peragenda sunt cum consilio capituli secundum praescriptum juris, non obstante, quod ejus consilium praelatus sequi non teneatur, *tamen si tale consilium is non adhibeat, irrita erunt acta ejus.*"[3]

We shall now proceed to explain briefly the cases where our bishops are bound, according to the *Third Plenary Council of Baltimore,* to proceed with the advice of their diocesan council. They relate to the diocesan statutes, the division of parishes, the placing of missions in charge of religious, the appointing of the deputies for the seminary, of new consultors and of synodal examiners, the alienation of ecclesiastical property, and the imposing of a new tax or assessment by the bishop. We shall now discuss each of these cases separately.

## Art. I.

### *The Bishop is bound to ask the Advice of the Consultors in convoking and promulgating the Diocesan Synod.*

I. The *Third Plenary Council of Baltimore* decrees: "Consilium consultorum exquiret episcopus *pro synodo dioecesana indicenda et publicanda.*"[4] To understand this law correctly, it should be borne in mind that, according to the general law of the Church, as now in force, it is certain that the bishop can *announce* and *convene* the synod without consent or even advice of the cathedral chapter. 2. That the synodal

[2] Alex. III., cap. 4. 5 (iii, 10).

[3] Reiff., l. iii., t. 10, n. 10.

[4] C. Pl. Balt. III., n. 20.

statutes, however, must, under pain of nullity, be made with the advice of the chapter, any custom to the contrary notwithstanding. Thus already in 1180 Pope Alexander III., writing to the Patriarch of Jerusalem, says: "Mandamus quatenus in . . . ecclesiae tuae negotiis . . . cum eorum (canonicorum) consilio . . . quae statuenda sunt, statuas."[5] This has also been confirmed by many decisions of the Holy See down to the present day. Consequently they must, on pain of nullity, be submitted to the chapter, and its opinion asked on them, *before* they are published in synod.[6] The chapter must naturally be allowed a sufficient space of time to examine the statutes submitted to it, so that it may be able to give an intelligent opinion on them. Consequently, while it is true that the bishop can convoke the synod without the advice of the chapter, it is also true that he cannot fix the date for the holding of the synod so early as to render it impossible for the chapter to examine and give their opinion on the proposed statutes, before the date fixed for the celebration of the synod. In this sense the bishop is indeed bound on pain of nullity to ask the advice of the chapter, also *in indicenda*, and not only *in publicanda synodo.*[7]

II. We say, *on pain of nullity;* for, as Benedict XIV. says, if the bishop makes laws or constitutions, and promulgates them in synod, without having beforehand asked the advice of the chapter, these statutes *will have no force*, considering that they have been made in a manner prohibited by law. However, continues this great Pontiff, they can, when there are just and sufficient reasons, be healed and rendered valid by the Holy See.[8]

III. From what has been said, it follows that the above

[5] Cap. Quanto 5, De His. (iii. 10).

[6] Benedictus XIV., De Syn., l. xiii., c. 1, n. 15, 16.

[7] S. C. C. in Hispal., 26 Nov., 1689; Ferraris, v. Capitulum, art. ii., n. 21-26; Bouix, De Cap., pp. 347, 401.

[8] Bened. XIV., De Syn., l. xiii., c. 16.

*Baltimore* decree can scarcely mean that the bishop cannot convoke the diocesan synod without the advice of the consultors, since he is obliged by the law itself, both general and statutory (supra, n. 564), to convene synods at stated times. The meaning, therefore, of the *Baltimore* decree is: The bishop, in the United States, *is bound*, before he holds the diocesan synod and publishes its decrees, to lay before his consultors, properly assembled, all the decrees and regulations which he intends to make and publish in the synod, and to ask their opinion or advice in regard to them.

IV. Besides the above consultation with the chapter or our consultors, which is obligatory, it is also customary and advisable for the bishop, some time prior to the synod, and prior to the consultation with the consultors, to select several learned and experienced priests in order to draft the statutes, which are to be laid before the consultors.[9] This action must not, however, be confounded with the consultation to be held with the consultors. The latter is obligatory; the former is merely advisable.

## Art. II.

### *The Bishop is obliged to ask the Advice of the Consultors in dividing Missions or Parishes.*

I. The second case in which bishops with us are bound to ask the advice of the consultors, is thus stated by the Prelates of the *Third Plenary Council of Baltimore*:[10] "Si contingat ut *missio* seu *parochia aliqua sit dismembranda*, exquirendum erit consilium consultorum, necnon et rectoris dismembrandae missionis." By *missio* or *parochia* are here meant *all our congregations or missions*, and consequently not

[9] Ferraris, v. Capitulum, Art. 2, n. 21, 22; Bouix, De Cap., p. 347.
[10] N. 20.

only those which have irremovable rectors, but also those which have simple or removable rectors. This is evident from the fact that the above *Baltimore* decree makes no distinction or exception whatever, and therefore includes all our missions or parishes.

II. The *Third Plenary Council* adds that the advice or opinion *of the rector* of the mission which is to be divided must also be asked. Here again the *Council* speaks of all our missions without exception. Consequently, the opinion or advice of the rector of the mission or parish which is to be divided must be asked beforehand, not only when such mission or parish has an *irremovable* rector, *but also when it has a rector who is not irremovable.* This is also in harmony with the constitution of our present Holy Father, Pope Leo XIII., *Romanos Pontifices*, issued in May, 1881, for England and Scotland, and are also extended to the United States, as we have seen. For the great Pontiff describes, in this celebrated constitution, that in dividing missions which are not canonical parishes the bishop is bound to ask not only the advice of the chapter, but also of the rector of the mission to be divided, whether it has a removable or an irremovable rector."[11]

The meaning, therefore, of the above *Baltimore* decree is, that in dividing missions or parishes, whether they have removable or irremovable rectors, the bishop is bound to ask the advice of the consultors and also of the rector of the parish which is to be divided. The bishop is indeed bound, on pain of the invalidity of the division, to ask this advice. But he is not obliged to follow it.

III. Let us now compare this regulation with the prescriptions of the general law of the Church concerning divisions of parishes. By the *jus commune*, as still in full force, the bishop is bound to proceed with the *consent*, not merely

[11] Leo XIII., Const. *Romanos Pontifices*, § Profecto.

*advice*, of the cathedral chapter in dividing or dismembering parishes.[12] For such division, consisting, as it does, in the taking from a parish a part of its territory or people and income, is considered in the eyes of the law a real and true alienation of ecclesiastical property (*alienatio rerum ecclesiae*), and is consequently placed on the same footing with the *alienatio rerum ecclesiae*, in the proper and literal sense of the word. Hence, like alienations proper, it can be made only with the consent of the chapter.[13] This consent is essential, whether the bishop proceeds in virtue of his *jurisdictio ordinaria*, or as *delegatus Apostolicae Sedis*, except when he acts as *delegatus Apostolicae Sedis* in regard to exempted parishes.

IV. From this it will be seen that our *Baltimore* decree differs from the general law in this, that the former requires merely the *advice* of the consultors, the latter the *consent* of the chapter. In fact, as Pope Leo XIII. expressly states in his constitution *Romanos Pontifices*[14] for England and Scotland, the general law applies only to canonical parishes, or to parishes having all the conditions prescribed by the general law, but not to missions not yet erected into canonical parishes.

V. The consent of the chapter, or, with us, the advice of the consultors, in the case must be preceded by a full discussion of the cause calling for the division, or *praecedente tractatu*, as canonists say. In other words, the chapter should give its consent, or our consultors their advice, only after having fully discussed with the bishop the causes calling for the division, their existence, their sufficiency, and in fact

[12] Pope Clement V. (1312) in Clem. *Si una* 2, De Reb. Eccl. Al. (iii. 4); Card. de Luca, De Benef., disc. 45, n. 4; Lotter., De Re Benef., l. i., q. 28, n. 60; Bouix, De Paroch., p. 270.

[13] Can. *Sine exceptione* 52, c. 12, q. 2; Leur., For. Benef., p. 3, q. 954, n. 7.

[14] Cap. Dudum, De Reb. Eccl. non Al. in 6° (iii. 9); Lotter., De Re Benef., l. i., q. 28, n. 4, 152; Leur., l. c., q. 954, n. 8.

everything relating to the proposed division, just as in the case of the alienation of ecclesiastical property.[15]

Besides the consent of the chapter (with us, the advice of the consultors), various other conditions or formalities are requisite in the division of a parish, as we show above, n. 265.

## Art. III.

*The Bishop is bound to ask the Advice of the Consultors when there is question of giving a Mission or Parish over to a Religious Community.*

I. The third case in which our bishops are obliged to ask the advice of the diocesan consultors is thus given by the Prelates of the *Third Plenary Council of Baltimore:* "Consultorum item requiretur consilium, quando id agetur, ut *missio seu parochia tradatur alicui familiae religiosae:* quo in casu necessaria erit etiam venia S. Sedis."[16] According to the general law of the Church as now in force, the bishop cannot give a parish over to regulars except with the *consent of the chapter.*[17] The reason is, that the giving over of parishes to religious communities is considered a species of *perpetual alienation of ecclesiastical property,* that is, a taking of ecclesiastical property from the secular clergy and giving it to the regulars.[18] For parishes are, by their nature, secular benefices or offices. Now it is an axiom of canon law that secular offices or benefices belong of right to, and should therefore be conferred upon, the secular clergy—*beneficia* (*parochiae*) *saecularia saecularibus sunt conferenda; regularia vero regularibus.*[19]

II. The above *Baltimore* decree ordains that the bishop

[15] § Profecto in C. Pl. Balt. III., p. 219. [16] Conc. Pl. Balt. III., n. 20.
[17] Innoc III., cap Pastoralis 7, De Donat. (iii., 24): Bouix, De Ap., p. 359.
[18] Leuren.. For. Eccl., lib. iii., q. 113, n. 2.
[19] Cf. Bouix, De Jure Reg., vol. ii., p. 45.

cannot place a religious community in charge of a parish or mission, without having previously taken the *advice of the consultors*. Our statutory law, therefore, differs from the general law in this, that the latter requires the *consent* of the chapter, the former merely the *advice* of the consultors.

III. The *Third Plenary Council of Baltimore* (n. 20) enacts furthermore that besides the advice of the consultors, *the permission of the Holy See* is also required, before a mission or a parish can be given over to a religious community. Herein our statutory law agrees fully with the general law of the Church, as in force at the present day. For it is certain that at present, according to the general law, parishes cannot be committed to a religious community without leave from the Holy See. This has been decided a number of times by the S. C. C.[20]

IV. The chief reason is that regulars, though not absolutely speaking debarred from the charge of parishes by the nature of the religious state,[21] are yet intended by their state of life not to mingle with seculars as much as a parish priest should, in order to discharge his duties properly. Hence the Holy See reserves to itself the right to decide in every case, whether it is expedient or not, to allow regulars to be placed over parishes.

V. Bouix (l. c., p. 51) says that religious communities which have no solemn vows do not seem comprised in the above law making the pontifical permission necessary. This opinion appears to us untenable. For the giving over of a parish to a religious community is a species of alienation, no matter whether the community in question has solemn vows or not. Now such alienation requires not merely the consent of the chapter (with us, advice of consultors), but also the dispensation of the Holy See.

VI. Whatever may be said on this head, it is certain that

[20] Bouix, De Jure Reg., vol. ii., p. 46. [21] Bouix, De Jure Reg., vol. ii., p. 9.

with us the law requiring both the advice of the consultors and the papal consent before a bishop can give a parish over to a religious community applies to *all* religious communities, whether they have solemn vows or *only simple.* This was expressly declared by the Cardinals of the Propaganda in the conferences held at Rome in 1883, between our archbishops and a committee of the Cardinals of the S. C. de P. F.

## Art. IV.

*The Bishop is obliged to ask the Advice of the Consultors in appointing the Deputies for the Diocesan Seminary.*

I. The *Third Plenary Council of Baltimore*, n. 20, thus states the fourth case in which our bishops are obliged to act with the advice of their consultors: "Consultorum consilium exquiretur *in constituendis deputatis pro seminariis dioecesanis.*" In order to carry out as nearly as possible the prescriptions laid down by the Council of Trent,[22] and explained above (n. 559), the *Third Plenary Council* decrees that for every seminary, whether minor or major, whether diocesan or provincial, *two committees* shall be appointed—one for the *spiritual* or internal, the other for the *temporal*, management of the seminary. Each of these committees is composed of *at least one ecclesiastic.* For the diocesan seminary, the members of both these committees are chosen by the bishop with the *advice of the consultors;* for the provincial seminary they are appointed absolutely by the bishops of the province collectively without the advice of diocesan consultors.[23] This mode of appointment differs considerably from that prescribed by the Council of Trent,[24] and explained above (n. 559).

II. According to De Brabandere,[25] the professors and

[22] Sess. xxiii., c. 18, De Ref.

[23] Conc. Pl. Balt. III., n. 179.

[24] Sess. xxiii., c. 18, De Ref.

[25] Vol. ii. p. 152.

directors of seminaries are not eligible as deputies or members of these committees, lest they should be at the same time both judges and interested parties.

III. *Removal of these Deputies.*—By the general law of the Church, the members of both the committees on the management of seminaries are irremovable or *perpetui, inamovibiles* (supra, n. 559).[26] The deputies for our seminaries possess all the rights and privileges given to committees on seminaries by the general law of the Church and the Council of Trent, except where the contrary is expressly stated by the *Third Plenary Council of Baltimore.* Now this *Council* does not say that our deputies are removable; in fact, it says nothing at all on this point. The inevitable conclusion, therefore, seems to be that they are irremovable. However, there is a difference between the irremovability of these deputies and that of irremovable parish priests. The latter can be removed only for crime, while the former can be removed also because of old age, sickness, and the like, by which they become incapable of discharging their duties as deputies.[27]

## ART. V.

*Our Bishops are bound to ask the Advice of the Diocesan Consultors in appointing a New Diocesan Consultor, and also in appointing Synodal or Pro-synodal Examiners.*

I. The fifth case in which the bishop, with us, is obliged to ask the advice of the consultors is thus set forth by the Prelates of the *Third Plenary Council of Baltimore:*[28] "Item consultorum consilium necessarium erit *in eligendo novo consultore, et in eligendis examinatoribus qui sint loco synodalium.*"

[26] S. C. C. in Papiens., 7 Julii, 1591; in Tricaric., 24 Martii, 1736; Bouix, De Cap., pp. 428, 436.

[27] Bouix, De Cap., p. 436.

[28] N. 20.

II. *Appointment of New Consultors.*—We have already sufficiently explained above how consultors are chosen, and when the advice of the other consultors is necessary in the appointment of a new consultor. We shall therefore pass to the appointment of our synodal or pro-synodal examiners.

III. *Necessity of the Consultors' Advice in the Appointment of Synodal Examiners.*—There are three kinds of examiners: (*a*) examiners for orders—that is, those who examine persons who are about to be promoted to holy orders;[29] (*b*) examiners for confessions—that is, those who examine priests wishing to be approved for confessions;[30] (*c*) finally, examiners who conduct the competitive examinations for vacant parishes.[31] The latter are called *examinatores synodales* because they are appointed in diocesan synod. Of these alone we shall here speak; for they alone must be appointed by the bishop with the *consent* of the chapter (in the United States, with the *advice* of the consultors) when the synod cannot be held every year.

IV. The Council of Trent enacts that appointments to vacant parishes shall be made only by "concursus" or *competitive examinations;* that these examinations shall be conducted by examiners chosen in diocesan synod; that at least six examiners be chosen by the synod; that whenever a parish falls vacant, the bishop shall select at least three out of these six in order to conduct the examinations before him or his vicar-general. The *concursus* or competitive examinations must on pain of nullity of the appointment be conducted *by the synodal examiners.* The case is different with regard to the examinations to be undergone by those who desire to be ordained or approved for confession; for the bishop can select any priests he pleases to conduct these examinations.[32]

[29] Conc. Trid., sess. xxiii., c. 7, De Ref. [30] Ib., sess. xxiii., c. 15, De Ref.

[31] Ib., sess. xxiv., c. 18, De Ref.; Brabandere, vol. ii., n. 921.

[32] Bened. XIV., De Syn., l. iv., c. 7, n. 2; Brabandere, l. c., n. 923.

V. According to the Council of Trent, the synodal examiners must be appointed *in diocesan synod.* The manner in which they are appointed is this: They are proposed or nominated by the bishop in diocesan synod, and must be *approved* by said synod. In other words, they are appointed by the bishop with the advice and *consent* of the synod.[33] The examiners thus appointed in synod remain in office till the next diocesan synod, which should be held within the space of a year from time of the last synod. In the new synod the old examiners may be either reappointed or others chosen in their stead.[34] If, however, during the course of the year which intervenes between the old and the new synod the number of the examiners chosen in synod is reduced, *v.g.*, by death, resignation, or other cause, to less than six, the bishop can appoint others, out of synod indeed, though not without the *consent of the chapter.* But if the number is not decreased below six, the bishop cannot substitute others extrasynodically.[35]

VI. This refers, however, only to the year which follows immediately on the celebration of the last diocesan synod. Now, what is to be done if no new synod is held after the lapse of a year from the time the last synod was held? It is certain that as soon as the year has expired, the office of those examiners expires at once, who were appointed extrasynodically, as above, during the course of the year, with the consent of the chapter.[36] As to the other examiners who were elected in the last diocesan synod, it is also certain that they hold over till the next diocesan synod, no matter how long it is deferred, provided there remain six of those examiners. But as soon as one of these six dies or resigns, or in some other way ceases to be an examiner, so that the number of those chosen in the last synod is reduced to less than six, the

[33] Conc. Trid., sess. xxiv., c. 18, De Ref.

[34] Conc. Trid., l. c.

[35] Bened. XIV., De Syn., l. iv., c. 7, n. 7.

[36] Bened. XIV., De Syn., l. iv., c. 7, n. 8.

office of all the others expires by that very fact; and the bishop cannot, after the lapse of one year from the time the last synod was held, substitute any examiners extrasynodically in the place of those who ceased to be examiners.[37]

VII. Therefore, if after the lapse of one year from the time the last synod was held, or any time thereafter, there remain less than six examiners, chosen in synod, the bishop must either convene another synod or apply to the Holy See for permission to appoint examiners out of synod. For if the bishop held a *concursus* with examiners appointed out of synod, a year after the last synod, without having obtained leave from the Holy See, the *concursus* would be null and void.[38] The Holy See always grants this permission, though only on condition that the examiners be proposed by the bishop to the chapter and *approved* by it; hence the *consent* of the chapter is requisite. Brabandere says the Holy See, at present, grants this permission usually for three years. The examiners appointed out of synod are called *examinatores pro-synodales*. From what has been said, it will be seen that synodal examiners when appointed in synods must be appointed with the *consent* of the synod; when appointed out of synod, with the *consent* of the chapter.

*Q.* What is the manner of appointing synodal or pro-synodal examiners in the United States?

*A.* We premise: 1. Thus far we have explained the provisions of the Council of Trent, or of the general law. Let us now see how far those provisions have been adopted and enjoined by the *Third Plenary Council of Baltimore*. 2. This Council has enacted, as we have shown above, n. 648, that appointments to missions or parishes which have irremovable rectors shall be made by *concursus*, to be conducted by the bishop or his vicar-general and the synodal examiners, in the manner laid down by the Council of Trent.[39] For this

[37] Bened. XIV., l. c., n. 8. [38] Ib. n., 9. [39] Sess. xxiv., c. 18, De Ref.

purpose, at least six examiners, if possible, shall be appointed in every diocese. When a mission which has an *irremovable rector* falls vacant, the bishop shall select out of these six at least three to conduct the examination. The bishop cannot select less than three, except where it is impossible to have so many, on account of the small number of priests in a diocese.[40]

We now answer: 1. Our synodal or rather pro-synodal examiners may be appointed either in or out of synod.[41] When they are appointed in synod, the *advice* of the synod is necessary to the validity of the election. But the *consent* of the synod does not appear to be required. Of course, in this case, the advice of the consultors is not needed. When the bishop wishes to appoint them out of synod, he must ask leave from the Holy See (the S. C. de P. F.) to do so. Having obtained this permission, he can appoint them out of synod, though only with the *advice of the consultors*.[42] From this it will be seen that while our examiners have the same rights and duties as synodal examiners proper, yet they differ from them so far as concerns the mode of appointment. Synodal examiners proper, as we have seen, must be appointed *in and with the consent of the synod*, while our examiners need not. Consequently they are not, in the proper sense of the word, synodal or pro-synodal examiners, but examiners *who take the place* of synodal or pro-synodal examiners. This peculiar characteristic or mode of appointment of our quasi-or vice synodal examiners seems to have been permitted by the Holy See, in view of the fact that our missions, even though having irremovable rectors, are not canonical parishes, in the full sense of the term.[43]

2. It would seem that our vice-synodal examiners, whether appointed in or out of synod, remain in office *permanently*, and not merely till the next diocesan synod.[44]

[40] Conc. Pl. Balt. III., n. 41. [41] Ib., n. 25. [42] Conc. Pl. Balt. III., n. 25.
[43] Cf. C. Pl. Balt. III., n. 24. [44] Ib., n. 25.

3. Finally, whenever the number of our examiners is reduced to less than the prescribed number (at least six, if possible), whether by death, resignation, or other cause, the bishop can and should substitute others with the advice of the consultors.[45]

From all this it will be seen that our vice-synodal examiners differ from synodal examiners proper as to the mode of appointment, as to the time they remain in office, and also as to the requisite number. We say *requisite number;* for the Council of Trent prescribes that *at least six* examiners must invariably be appointed in diocesan synod, and that at least three of them must always be present at the *concursus;*[46] whereas, in our case, at least six should be appointed, *where this is possible,*[47] and at least three of them should attend every concursus, *unless three cannot be had.*[48]

VI. *Rights and Duties of Synodal Examiners also in the United States.*—The rights and duties of these examiners, also with us, in relation to the manner of conducting the examination, are clearly set forth by the *Third Plenary Council of Baltimore*, n. 44 sq., to which we refer the reader. After the examination or *concursus* is over, the examiners have the right and duty to determine what candidates have passed the examinations, and are consequently worthy to be appointed to the vacant parish or mission. Those whom they find unworthy they must reject; those whom they find worthy, they must report to the bishop as worthy. From among those whom the examiners report as worthy, it is the bishop's exclusive right and duty to select him whom before God he considers the most worthy (*dignior*).[49]

VII. *Right of Appeal.*—Candidates who have been examined, and who are not appointed to the vacant parish or mission, have also in the United States, as we have shown

[45] Cf. C. Pl. Balt. III., n. 25.

[46] Conc. Trid., sess. xxiv., c. 18, De Ref

[47] C. Pl. Balt. III., n. 25.

[48] Ib., n. 41, 49.

[49] Bened. XIV., Const. *Cum illud*, § 11.

above, a right to appeal *a mala relatione examinatorum et ab irrationabili judicio episcopi*—that is,[60] against the unfair report made to the bishop by the examiners, and also against the wrong action of the bishop in appointing as the *dignior* one who is not *dignior*. In order to make this more clear, we observe: A candidate may either fail to pass the examination successfully, and consequently be rejected by the examiners or reported by them to the bishop as *indignus;* or he may indeed pass and be reported to the bishop as *dignus*, and yet not be appointed. In the first case he can appeal against the report of the examiners as being unfair and unwarranted, by the result of the examination; in the second case he has the right to appeal against the appointment made by the bishop, on the ground that the one whom the bishop considers the *dignior*, and whom consequently he has appointed to the vacant parish or mission, is in reality not the *dignior*, but only *dignus*. If the appellant can prove before the *judex ad quem* that the one whom the bishop has appointed is not the *dignior*, but that he—the appellant—is the *dignior*, then the appointment of the bishop must be revoked, and the parish or mission, also with us, conferred on the appellant. In both cases, however, the appeal is merely devolutive, not suspensive, as we have already noted. However, candidates who appeal must prove their allegations, and that exclusively from the acts and documents of the *concursus*, a copy of which must be given them for that purpose.

## Art. VI.

### *Necessity of the Advice of the Consultors in the Alienation of Ecclesiastical Property.*

I. The sixth case or matter in which the bishop is bound to ask the advice of the diocesan consultors is thus ex-

[60] Bened. XIV., Const. *Cum illud*, 1742, § 16 (VI.).

pressed by the *Third Plenary Council:*[51] "Quando agitur *de bonis et fundis dioecesis vel Missionum permutandis aliisque agendis, quae speciem alienationis prae se ferunt*, ubi summa pecuniae non excedat valorem quinque millium scutatorum ($5000), episcopi liberi erunt; ubi vero negotium eam summam superat, *tunc requiritur consilium consultorum*, eoque praehabito, *necessaria est S. Sedis permissio.*" In order to understand this law better, it will be necessary to explain briefly the general law of the Church respecting the alienation of ecclesiastical property.

*Q.* When and how is it allowed, according to the general law of the Church, as now in force, to alienate ecclesiastical property?

*A.* We premise: 1. By *ecclesiastical property* (*res ecclesiae*) is here meant, not merely all property, real or personal, belonging to churches, chapels, or oratories, used for religious worship, but also that which belongs to charitable and pious institutions established by ecclesiastical authority, such as hospitals, asylums, monasteries, convents, etc. However, only that property, real or personal, of these churches or institutions is here meant which is of *considerable value*, that is, which is worth more than $25, or according to some $50,[52] or according to others, $100. Property, real or personal, of less value than this may be freely alienated.

2. The word *alienation* is here taken in its *widest sense*, and therefore means not merely every act or transaction by which the *ownership* is transferred, such as (*a*) donations, (*b*) sales, (*c*) exchanges or purchase of new property, but also all acts or transactions by which the *use* of the property, or *jus in re* or *ad rem*, is transferred to another, namely, (*a*) all mortgages or other incumbrances put upon the property; (*b*) all leases for a term longer than three years;[53] (*c*) the imposing

[51] N. 20.

[52] Santi, Prael., l. iii., t. 13, n. 6.

[53] Cap. Nulli 5, De reb. eccl. (iii., 13); Clem. 1, 2, De reb. eccl. (iii., 4).

of new taxes, assessments, or contributions by the bishop or others; (*d*) the giving up of a lawsuit, when this giving up of the suit involves the loss of the contested property; (*e*) finally, any transaction, agreement, or compromise, by which a burden, *v.g.*, a pension, is imposed upon the ecclesiastical property, even though neither the *ownership* nor the *use* of the property is transferred.[54] It will be seen, therefore, that by alienation is here understood not merely alienation in the strict sense, but everything else that has the semblance of it, or whatever is a *species alienationis*.[55]

Having premised this, we now answer: The rule is that ecclesiastical property cannot be alienated except (*a*) for grave and sufficient reasons of urgent necessity or evident utility, (*b*) and with the formalities prescribed by law; otherwise the alienation is *ipso jure* null and void, and, moreover, both the person alienating and the person presuming to receive ecclesiastical property, thus unlawfully alienated, incur,[56] among other penalties, excommunication *ipso facto*, reserved, however, at present, according to the constitution *Apostolicae Sedis* of Pope Pius IX., to no one.[57]

We say, first, *except for grave* and *sufficient* cause. Now, what are considered by the law grave and sufficient causes? These two: 1. *Urgent necessity*, *v.g.*, where a church has a heavy debt and cannot pay it, except by alienating property, or also where a property has become useless.[58] 2. *Evident utility;* thus it is allowed to alienate property for the purpose of acquiring another property which is better and more useful.[59]

We say, second, *with the formalities prescribed by law.* Now, what are these formalities? These two: 1. The con-

[54] Can. Non liceat 20, c. 12, q. 2; Schmalzg., l. iii., t. 13, n. 10.
[55] Cf. Schmalzg., l. iii., t. 13, n. 6 sq; Brabandere, Jur. Can. comp. n. 949.
[56] Reiff. l. iii., t. 13, n. 4. [57] Const. Ap. Sedis, 1869, Excom. nem. res. iii.
[58] Reiff., l. c., n. 18.
[59] Can. Sine exceptione 52, c. 12, q. 2; cap. 8, De reb. eccl. (iii., 13).

sent of the chapter or others interested.[60] When there is question of alienating the property of the cathedral, or of the *mensa episcopi*, or of the diocese, as such, the consent of the cathedral chapter is required. But when there is question of alienating the property of the other churches of the dioceses, *i.e.*, of the parishes of the diocese, the consent of the cathedral chapter is necessary only when the bishop himself wishes to make the alienation, but not when the rector or parish priest of the respective church desires to make it.[61] In the latter case it is sufficient that the rector wishing to make the alienation should obtain the consent of the bishop.[62] It should be observed here, that the chapter can give its consent to the alienation only after it has fully discussed (*praecedente tractatu*) the causes of necessity or utility calling for the alienation.[63]

2. Besides the consent of the chapter, the *permission of the Holy See* is also required, and that on pain of excommunication incurred *ipso facto*, as enacted first by Pope Paul II.,[64] and re-enacted by Pope Pius IX.[65] Pope Paul II., in his Const. *Ambitiosae* decreed that bishops alienating ecclesiastical property, without leave from Holy See, should incur *ipso facto* the interdict *ab ingressu in ecclesiam*. This punishment is not mentioned in the Const. *Apostolicae Sedis* of Pius IX., and therefore is abolished.[66] The prohibition to alienate ecclesiastical property applies not merely when there is question of alienating ecclesiastical property from a church or religious institute to *laics*, but also from *one church* to *another church*.[67] With these explanations, it will now be easy for us to understand when and how the bishop, with us, is bound to act

[60] Cap. 8, De his. (iii., 10); Schmalzg., l. c., n. 78.
[61] Schmalzg., l. iii., t. 10, n. 2.
[62] Santi, l. iii., t. 13, n. 10.
[63] Reiff., l. iii., t. 13, n. 23.
[64] Cap. *Ambitiosae*, De Reb. Eccl. Al. vel non, Extr. Com. (iii., 4). A.D. 1468.
[65] Const. Ap. Sedis 1869, l. c.
[66] Santi, l. iii., t. 13, n. 15.
[67] Cap. 1, De Reb. Eccl. Al. vel non. (iii., 13); Santi, l. c., n. 12.

with the advice of the consultors in alienating ecclesiastical property, as we shall presently explain.

☞ *Q.* When and how can bishops in the United States alienate ecclesiastical property?

*A.* We premise: What we have said above concerning the meaning of the words *alienation* and *ecclesiastical property* holds fully true, also, with us. This is clear from n. 20 (6°) of the *Third Plenary Council of Baltimore*, and the decree of the S. C. de P. F. dated Sept. 25, 1885. For both these documents expressly mention not merely alienation, but also *whatever has the semblance or species of alienation.* However, with us the amount involved in the alienation must exceed $5000; otherwise the bishop is free to make the alienation without the prescribed formalities.

We now answer: Our bishops cannot alienate ecclesiastical property where the sum involved exceeds $5000, except (*a*) for *grave* and *sufficient cause*, as explained above; (*b*) with the *advice* (not *consent*) of the consultors. This advice is necessary not only when there is question of alienating the ecclesiastical property of the cathedral or of the bishop's *mensa*, or of the diocese at large, but also when there is question of alienating the property of any of the other parishes or missions of the diocese, and that even where the respective rector, and not the bishop, wishes to make the alienation. The advice of the consultors must be preceded by a full discussion of the causes calling for the alienation. (*c*) Finally, the permission of the Holy See is also necessary. However, owing to our peculiar circumstances, Pope Leo XIII., at the request of the *Third Plenary Council of Baltimore*,[68] has dispensed all our bishops, for *ten years* from the date of the promulgation of the *Third Plenary Council*, from the obligation of obtaining the permission of the Holy See, in every particular case.[69]

[68] Conc. Pl. Balt. III., n. 20.

[69] Cf. Conc. Pl. Balt. III., p. clii.

## Art. VII.

*Necessity of the Consultors' Advice for the Imposing of new Taxes for the Bishop.*

I. The seventh case in which the bishop is bound to take the advice of the diocesan consultors is thus stated by the *Third Plenary Council of Baltimore* (n. 20): "Item, *praehabito consilio consultorum, necessarius erit recursus ad S. Sedem in singulis casibus, in quibus agatur de imponenda nova taxa pro episcopo, quae excedat limites a canonibus constitutos.*" In other words: In all cases where there is question of imposing a new tax, collection or contribution for the bishop, which goes beyond the rules laid down by the sacred canons, the bishop is bound to take the advice of the consultors; and after this advice has been taken, it is also necessary to have recourse to the Holy See, and that in each individual case.

II. Here two questions arise: What is meant by *taxa nova pro episcopo?* and by the clause *quae excedat limites a canonibus constitutos?* We reserve the answer for a future edition of this work. Suffice it here to say that, owing to the general terms in which these phrases are couched, and the consequent difference of opinions as to their meaning, it is desirable that an authentic explanation of them be given by the Holy See; especially as the phrases were inserted by the Holy See itself, when the acts and decrees of the *Third Plenary Council of Baltimore* were submitted to the S. C. de Prop. Fide for revision. Until such an authentic explanation is given it would appear unsafe, or, at least, unsatisfactory, to attempt to give any private or doctrinal explanation, that would commend itself to the approval of others.

## Art. VIII.

### *Several other Cases in which the Bishop is bound to ask the Advice of the Diocesan Consultors.*

Besides the above seven cases, there are several other matters where our bishops are expressly obliged by the *Third Plenary Council of Baltimore* to act with the advice of the diocesan consultors. Thus he is bound to ask this advice, 1, in determining what missions shall be made parishes with irremovable rectors;[10] 2, in appointing the *first* irremovable rectors;[11] 3, in fixing the amount of the pension (*pensio congrua*) to be accorded to an irremovable rector who resigns or is removed because of inculpable inability to discharge his parochial duties;[12] 4, in determining out of synod what shall be the salary of rectors, and in settling certain other questions connected therewith;[13] 5, in making laws and regulations, out of synod, respecting the *jura stolae* and the taxes to be given to rectors, on occasion of the administration of the Sacraments and other acts of the sacred ministry.[14] The rate of these *jura stolae* as fixed in synod must also be sent to Rome for approval.

## Art. IX.

### *Meetings of the Consultors.*

Thus it will be seen that there are altogether twelve cases where the bishop is expressly obliged by the *Third Plenary Council of Baltimore* to act with the advice of the diocesan consultors, and where consequently his acts are *ipso jure* invalid if he fails to take the advice in question.

[10] C. Pl. Balt. III., n. 33. [11] Ib., n. 37.
[12] Ib., n. 38, vii. [13] Ib., n. 273. [14] Ib., n. 294.

The consultors must in all these cases give their opinion or advice *collectively*, that is, *in a body*, like chapters proper,[75] or like every corporation or moral body. In other words, they must be properly convened in council meeting, and when thus assembled, give their opinion by vote, after having duly discussed the matter on which their advice is asked. They may vote by *secret ballot* as often as they deem it proper. The ordinary meetings of the consultors must be held *four times* every year, at stated times, or, where this cannot be done, at least *twice* a year. The extraordinary meetings must take place as often as it is necessary for the bishop to do something, where, as stated above, he must take the advice of the consultors.[76] Both the ordinary and extraordinary meetings are called and presided over by the bishop.[77]

[75] Cf. Reiff., l. iii., t. xi., n. 11–22. [76] C. Pl. Balt. III., n. 21. [77] Ib.

# CHAPTER III.

## RIGHTS AND DUTIES OF OUR DIOCESAN CONSULTORS DURING THE VACANCY OF THE SEE.

### Art. I.

### *Appointment of the Administrator.*

I. Hitherto we have discussed the rights and duties which our consultors possess, during the time the see is filled —*sede plena.* But what are their rights and duties *when the bishopric falls vacant?* These rights and duties refer chiefly to the power to govern the vacant diocese *ad interim,* and to the choice of the new bishop. We shall first explain upon whom devolve the administration of the vacant diocese and the choice of the new bishop, by the general law of the Church, and then see whether and how far the powers conferred by this general law upon chapters are vested in our consultors.

II. When a see falls vacant, whether by the death, resignation, transfer, or removal of the bishop, its administration and government, for the whole time of the vacancy, belong, by the general law of the Church,[1] as a matter of right, not merely of privilege, favor, or delegation, to the cathedral chapter of the vacant diocese,[2] as we show above, n. 635. However, at present, the chapter cannot govern the vacant

[1] Cap. 3, 4, De Suppl. Neg. in 6° (i. 8), by Pope Boniface VIII. (1299); Conc. Trid., sess. vii., c. 10, De Ref.

[2] Canonists usually discuss the rights and duties of chapters, while the see is vacant, under the heading *Ne sede vacante aliquid innovetur,* under which title the decretals also touch upon these matters.

diocese collectively or in a body, but is bound, within eight days after it is informed of vacancy, to appoint or rather elect a vicar or vice-gerent, or administrator, whose right and duty it is to govern and administer the diocese in the name of the chapter, and as its vicar, agent, or representative. This administrator is consequently *Vicarius Capitularis*, or vicar of the chapter.

III. These rights are also vested in and exercised at present by chapters in Ireland[3] and England.[4] They are not vested in our diocesan consultors. For diocesan councils, as established by the *Third Plenary Council of Baltimore*, are not cathedral chapters, and therefore cannot be said to be possessed of rights which the law confers on cathedral chapters proper, unless the contrary is expressly stated. Now the *Third Plenary Council of Baltimore* makes no mention whatever of any of the above rights being vested in diocesan councils. Wherefore the administration of a vacant diocese does not devolve upon our consultors, and consequently the appointment of the administrator remains now, as before the *Third Plenary Council*, in the hands of the bishop, or metropolitan or senior suffragan bishop, as explained above, n. 638.

### Art. II.

*When the Administrator must take the Advice of the Consultors.*

However, as the administrator or rather vicar-capitular appointed by the cathedral chapter must act with the advice and consent of the chapter, in all cases where the bishop himself is obliged to do it, so, likewise, are administrators with us, though not appointed by the consultors, bound to take the advice of these consultors in all matters where the bishop himself is obliged to take this advice.[5]

[3] C. Pl. Hiberniae, apud Maynut., p. 273 sq.
[4] Conc. Prov. Westmon. I., n. xii. 1; Coll. Lac., vol. iii., p. 924.
[5] C. Pl. Balt. III., n. 22.

## ART. III.

### *Rights of the Consultors in the Election of the new Bishop.*

I. The second right and duty which the cathedral chapter has by the general law of the Church is to elect the new bishop of the vacant diocese. The reason of this law is thus stated by Schmalzgrueber:[6] "Jus eligendi episcopum concessum fuit capitulo cujusque ecclesiae. Et merito, nam illi, qui sunt de corpore ecclesiae, *melius censentur informati esse* de necessitatibus et commodis ecclesiae, quam alii extranei. Igitur quando agitur de provisione capitis, per quod praecipue gubernari debet ecclesia (dioecesis), ad ipsa membra ecclesiae spectare decet electionem potius quam ad alios non ita informatos."

However, at the present day, in all parts of the world save in some dioceses of Germany, the Roman Pontiffs have reserved to themselves the right of election proper, leaving to chapters and others merely the right of *nominating* or rather *commending* the candidates for the vacant see. See above, n. 297 sq., and n. 343.

This right of recommending to the Holy See candidates for the vacant diocese is vested in parish priests and chapters in Ireland, in chapters in England, and at present, according to the discipline introduced by the *Third Plenary Council of Baltimore*, also in our diocesan consultors and irremovable rectors, as explained above, n. 345 sq.

[6] Lib. i., tit. 6, n. 3.

# SUPPLEMENTARY NOTES.

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**MODE OF QUOTING FROM THE "CORPUS JURIS."**

(*a*) *n.* 161.

Q. What is the mode of quoting from the "Corpus Juris Canonici"?

A. I. *From the "Decretum" of Gratian.*—Quotations from the first part of the "Decree" are usually made thus: C. *Regula*, 2, d. 3—that is, canon the second, beginning with the word "Regula," distinction third. Some authors omit the first word of the canon and quote thus: C. 2, d. 3. Others omit the number of the canon, quoting thus: C. *Regula*, d. 3. Quotations from the second part of the "Decree" are generally thus made: C. *Omnes*, 4, c. 6, q. 1—that is, the fourth canon, whose first word is "Omnes," of the first question under the sixth cause. Some authors omit the first word of the canon; others its number. The third question of the thirty-third cause is a treatise on penance, divided into seven special distinctions, and usually quoted as follows: C. *Qualitas*, 2, d. 5, *d. Poenit.*—that is, the second canon, whose first word is "Qualitas," of the fifth distinction in the treatise on penance.[1] Quotations from the third part of the "Decree" are generally made thus: C. *Ut ostenderet*, 123, d. 4, *de Consecr.*—that is, the 123d canon, beginning with the words "Ut ostenderet," of the fourth distinction in the treatise on consecration. To Gratian's "Decree"

[1] Phillips, Kirchenr., vol. iv., p. 154.

are annexed "Canones Apostolorum" and "Canones poenitentiales." The latter are quoted: C. *Po nit.* 14—that is, the fourteenth penitential canon; the former: C. *Apost.* 15—that is, the fifteenth apostolic canon.

II. *From the Decretals of Pope Gregory IX.*—In quoting from the books of the decretals, the first word of the chapter is usually given; then the title of the book; next the letter X, which stands for *extra*, showing that the citation is not from Gratian's "Decree." Here is a specimen quotation: Cap. *Quotiens* X, *de Pactis*—that is, the chapter beginning with the word "Quotiens," under the title "de Pactis," in the decretals. The easiest way to find the text of this quotation is to run over the alphabetical index attached to the decretals, find the letter P, where it will be seen that the title "de Pactis" is the thirty-fifth title of the first book of the decretals. Quotations from the sixth and seventh books of the decretals are found in a similar manner.

III. The sixth and seventh books of the decretals are quoted like the five just mentioned, with the addition, respectively, *in* 6° and *in* 7°, which means in the sixth or seventh book of the decretals.

IV. The "Clementinae" are thus quoted: *Clem. Multorum, de Poenis*—that is, in the "Clementinae" (collection of decretals by Pope Clement V.), the chapter beginning with the word Multorum, under the title "de Poenis." To find this place, the title "de Poenis" should be looked for in the index appended to the "Clementinae," and it will be seen that this is the eighth title of the fifth book of the "Clementinae."

V. Quotations from the "Extravagantes" of Pope John XXII. are as a rule thus made: *Extrav. Ecclesiae, de Major. et Obed.*—that is, the chapter whose first word is Ecclesiae, under the title "de Majoritate et Obedientia," in the "Extravagantes" of John XXII.

VI. Quotations from the "Extravagantes Communes"

are thus made: *Extrav. Comm. Etsi, de Praeb. et Dignit.*—that is, the chapter beginning with the word Etsi, under the title "de Praebendis et Dignitatibus," in the "Extravagantes Communes." This title, if looked for in the index, will be found to be the second title of the third book of the "Extravagantes Communes."[1]

### IRREMOVABLE RECTORS IN THE UNITED STATES.

($\beta$) *n.* 260.

*Can Bishops in the United States make more than one of every ten rectors irremovable, within the first twenty years after the promulgation of the Third Plenary Council of Baltimore?* They can, if they consider it prudent. For the *Third Plenary Council of Baltimore* (n. 35) merely *advises* bishops not to exceed the above number, *inconsulte, i.e.*, without good reasons.

### SENTENCES EX INFORMATA CONSCIENTIA.

($\delta$) *n.* 445.

What do we mean by sentences *ex informata conscientia?* Is every extrajudicial act or sentence of the bishop an act or sentence *ex informata conscientia* simply because it is extrajudicial? In other words, are the terms "extrajudicial" and "ex informata conscientia" always synonymous? By no means. For by sentences "ex informata conscientia" we understand only two kinds of extrajudicial sentences—namely, where the bishop, by virtue of C. i., d. R., sess. xiv. C. Trid., extrajudicially, 1, either forbids a person to receive sacred orders, 2, or *suspends* him from orders already received. In these two cases only, there is no appeal or recourse to the metropolitan, but only to the Holy See. From other

[1] Craiss., Man., n. 194, sq.: Bouix, de Princ., p. 400.

extrajudicial acts or sentences of bishops an appeal can generally be made to the metropolitan, since they are not acts or sentences "ex informata conscientia," though extrajudicial.[3] Observe, also, that dismissal from parish, even in the United States, not being *per se* suspension, cannot be inflicted "ex informata conscientia," and therefore allows of appeal to the metropolitan.[4]

APOSTOLI, OR CERTIFICATE OF APPEAL FROM THE SUPERIOR "A QUO" TO THE SUPERIOR "AD QUEM."

(ε) *n.* 453.

According to Cardinal Soglia,[5] these "apostoli," or letters from the superior "a quo" to the superior "ad quem," certifying to the appeal, are no longer, at least universally, in use; and in their stead the appellant is given a copy both of the sentence or decree from which he appeals and of the appeal itself, as authenticated by the *judex a quo.*[6] This copy or certificate of appeal (*apostoli*), where given, is presented by the appellant to the superior *ad quem;* and the latter, if he admits the appeal only "in devolutivo," gives the appellant mandatory letters, commanding the superior "a quo" to forward to him, within a stated time, the acts in the case; but if he receives the appeal "in suspensivo," he, moreover, issues letters (*litterae inhibitoriales*) commanding the superior "a quo" not to proceed any further in the case.[7]

EFFECTS OF APPEALS.

(ς) *n.* 453.

We premise: By the *judex a quo* is meant the superior (*v.g.*, bishop) from or against whose decision the appeal is

[3] Bouix, de Episc., t. i., p. 474.
[4] Id., de Judic., t. ii., p. 252.
[5] Tom. ii., p. 525.
[6] Devoti, lib. iii., tit. xv., n. 11.
[7] Soglia, l. c., p. 526.

made; by the *judex ad quem*, the superior (*v.g.*, metropolitan or pope) to whom the appeal is directed.

I. *Effects of Appeals on the Superior "a quo."*—1. He is bound to defer to any appeal interposed for just cause. Now, in order that the cause of the appeal should be considered just, it is not necessary that its existence should be actually verified, but merely that it be of such nature that, if its existence were proved, it would be considered legitimate. 2. If the superior *a quo* does not defer to a lawful appeal, he becomes liable to deposition (at least when there is question of appeals to the Holy See) or other penalty at the discretion of the proper superior; and the appellant may, notwithstanding, continue his appeal. 3. In case of doubt whether there is just cause for appealing, he should defer to the appeal, especially when made from a final sentence. 4. In cases where appeals are forbidden by canon law (supra, n. 445, sq.), or where interposed frivolously, he (the superior *a quo*) need not, nay, should not, defer to them, and may, notwithstanding the appeal, proceed in the case without rendering himself liable to punishment. 5. But even where he lawfully refuses to consent or defer to the appeal he should, nevertheless, give the appellant letters certifying to the appeal (*apostoli*), or an authentic copy of the sentence and of the appeal as made known to him. Bouix[8] holds that the authentic copy or *apostoli* are *always* to be given.

II. *Effects upon the Superior "ad quem."*—What is the duty of the superior *ad quem* with regard to appeals brought to his tribunal? 1. He should first of all determine whether the appeal was properly interposed. Before doing so he cannot take cognizance of the cause itself, nor remit it to the superior *a quo*. 2. If he decides that the appeal has been properly interposed, the whole case devolves *eo ipso* upon him for

[8] Supra, n. 453. Cf. Bouix, de Judic., t. ii., p. 286.

adjudication, no matter whether the appeal was from a final or interlocutory, judicial or extrajudicial, sentence. Hence it is his duty to try the whole case, and he can send for persons and papers, and demand an authentic copy of the minutes or acts of the court or superior from whom the appeal is made. He can pronounce final sentence, and also enforce it, unless an appeal is also made from his decision. 3. When he has been notified of an appeal made to him with the requisite formalities—that is, within the proper time, authenticated by the superior *a quo*, etc.—he can at once—that is, as soon as he begins to consider the admissibility of the appeal—forbid the superior *a quo* to execute his sentences if final; but if the sentence be not final he can do so only after it has been shown that the appeal is admissible, according to the canons, and that in the presence of the parties.

This brings us to another very important effect of appeals, which is thus expressed: Whatever ulterior steps are taken in the case by the superior *a quo*, after the appeal has been interposed and pending the appeal, are to be considered as vain and futile attempts (*attentata*), which are of no effect and should be rescinded. Now, what in particular are to be looked upon as attempts of this kind? We answer: All such steps as are taken by the superior *a quo* against the appellant either after the appeal from a final. or quasi-final sentence (judicial or extrajudicial) was interposed, or even during the time intervening between the pronouncing of the sentence and the making of the appeal. Now, how are these attempts to be reversed? 1. The superior *ad quem* can annul them both *ex-officio*, and at the request of the appellant. 2. They can, nay, should, if the appellant so asks, be revoked, even before it is shown that there was a just cause for appealing, and before the hearing of the cause itself takes place; and this holds true not only with regard to appeals from final or interlocutory sentences hav-

ing the force of final sentences, but also with regard to appeals from extrajudicial acts.[1]

### THE VISIT AD "SS. LIMINA" BY THE BISHOPS OF IRELAND.

($\eta$) *n.* 472.

Q. How often are the bishops of Ireland at present to make their visit *ad limina?*

A. At first (*Const. Romanus Pontifex ann.* 1585) they were bound to make the visit every four years; afterwards—namely, from 1631—only every ten years. But at present, according to the decree of the Propaganda, dated September 1, 1876, they are obliged to make the visit *ad limina* once every five years. (Apud Conc. Pl. apud Maynooth, A.D. 1875, p. 281.)

### HOW THE TERMS, WHETHER OF THREE, FOUR, FIVE, OR TEN YEARS, FOR THE EPISCOPAL VISIT "AD LIMINA SACRA" ARE TO BE COUNTED.

($\theta$) *n.* 472, 556.

☞ From what has been said above (n. 556), it follows that if, for instance, the visitation for the decennium beginning with December 20, 1885, and ending with December 20, 1895, has been made by the bishop or his procurator, at any time during said period, the successor of such bishop, even though he is appointed several years before the expiration of December 20, 1895, need not make the visitation during the period of 1885–1895. On the other hand, if a bishop who is appointed even but a few months before December 20, 1895, finds that none of his predecessors has made the visit within 1885 and 1895, he is bound to make it before December 20, 1895, unless he obtains a dispensation from Rome. Likewise, where a new diocese is established with us, for instance in

[1] Bouix, de Judic., vol. ii., pp. 285-293; Craiss.. n. 5990, sq.

1887, the decennial term within which the first bishop is obliged to make his first visit *ad limina*, does not begin from the time the new diocese was formed—1887, but from December 20, 1885, and ends December 20, 1895.[10]

THE RIGHT OF OPTION VESTED IN CARDINALS.

(*i*) *n.* 496.

Q. What is the right of option (*jus optandi*) of cardinals?

A. It consists substantially in this, that when a suburbicary bishopric, or a title, or a diaconate becomes vacant, the next oldest cardinal (by creation) of the respective order has a right to give up his own title and choose the vacant one. Thus, if the see or title of a cardinal-bishop becomes vacant, the next oldest cardinal-bishop can select it; if the title or church of a cardinal-priest falls vacant, the next oldest cardinal-priest can choose it.[11] Nay, sometimes a cardinal of one order may select the title of another order. Thus, the oldest cardinal-priest can choose the title, when vacant, of the youngest cardinal-bishop; and the oldest cardinal-deacon that of the youngest cardinal-priest. Moreover, a deacon, when ten years a member of the Sacred College, precedes in the exercise of the right of option cardinal-priests created after him. This right of option belongs only to cardinals resident in Rome or absent temporarily for a public cause.[12]

THE PROPAGANDA AND MISSIONARY COUNTRIES.

(*k*) *n.* 508.

In order not to be misunderstood in regard to what we say under n. 508, we here observe that affairs or questions

[10] Conc. Pl. Balt. III., n. 13; Instr. S. C. de P. F. June 1, 1877, in C. Pl Balt. III., p. 197.

[11] Phillips, Kirchenr., vol. vi., p. 238. [12] Id., Comp., ed Vering, § 110.

from missionary countries are sometimes referred by the Propaganda to, and decided by, one of the other congregations charged with the specific matter. But, in all cases, the Propaganda is the organ of communication. Hence, no matter whether the Propaganda itself solves the questions or merely causes them to be solved by one of the other congregations, the petitions or questions must always be addressed to, and the answers or dispensations are always returned by, the Propaganda. Therefore all affairs of missionary countries are arranged solely by the Propaganda, at least as the organ of communication.

### RECENT DECISION OF THE HOLY SEE CONCERNING THE CUSTOM PREVALENT IN SOME PARTS OF THE UNITED STATES OF RECEIVING A NUMBER OF ALMS OR STIPENDS FOR THE MASS ON ALL SOULS' DAY.

(λ) *n.* 593.

The following case was submitted to the Propaganda by one of the bishops in the United States:

*Compendium facti.*—Reverendissimus Episcopus R. in America ad Emum. Praefectum S. Congr. de Prop. Fid. epistolam misit sequentis tenoris:

"In pluribus Foederatorum Statuum Americae Septentrionalis dioecesibus, et etiam in hac mea R. invaluit consuetudo ut pro unica Missa quae in die commemorationis omnium fidelium defunctorum cantatur, fideles contribuant pecuniam. Summa autem pecuniae sic collecta ordinarie tanta est, ut plurium centenarum Missarum eleemosynas facile exaequet. Inter eos qui pecuniam hoc modo contribuunt, plurimi sunt de quibus dubitari merito possit, utrum eam hoc modo collaturi forent, si rite edocerentur animabus purgatorii, quas sic juvare intendunt, melius provisum iri, si tot Missae pro iis, licet extra diem commemorationis

omnium fidelium defunctorum, celebrarentur, quot juxta taxam dioecesanam continentur stipendia in summa totali sic contributa.

"Ut erroneae fidelium opinioni occurratur, in quibusdam dioecesibus Statuto Synodali cautum est, ut, nisi singulis annis praevia diligens totius rei explicatio populo fiat, missionariis eam fidelium pecuniam pro unica illa Missa accipere non liceat.

"Quare Eminentiam Vestram enixe ac humillime precor, ut pro pace conscientiae meae, ad dubia sequentia respondere dignetur:

"1. Utrum praedicta consuetudo *absolute* prohibenda sit? Quod si *negative:*

"2. Utrum tolerari possit casu quo quotannis praevia illa diligens totius rei explicatio populo fiat? Quod si *affirmative:*

"3. Utrum, si timor sit ne vel missionarii praeviam illam diligentem eamque plenam totius rei explicationem populo praebeant, vel populus eam satis intelligat, ordinarius istam consuetudinem prohibere possit, et missionariis injungere, ut pro tota summa contributa, intra ipsum mensem Novembris tot legantur vel cantentur Missae, quot in ea continentur stipendia, pro Missis sive lectis, sive cantatis? Quod si *affirmative:*

"4. Utrum ob rationem, quod Missae illae intra ipsum mensem Novembris legendae vel cantandae sint, ordinarius consuetum Missarum sive legendarum sive cantandarum stipendium, pro aequo suo arbitrio pro illis Missis possit augere?"

On January 27, 1877, the S. C. Concilii, to whom the case had been referred by the Cardinal-Prefect of the Propaganda, gave the following answer:

*Responsum:* "Nihil innovetur; tantum apponatur tabella in ecclesia, qua fideles doceantur, quod illis ipsis elee-

mosynis una canitur Missa in die commemorationis omnium fidelium defunctorum."

## THE RECENT PLENARY SYNOD OF MAYNOOTH ON THE REMOVAL OF PARISH PRIESTS.

($\mu$) *n.* 648.

Q. How are parish priests removed in Ireland, according to the Plenary Council of Maynooth, held in 1875?

A. We premise: In Ireland parish priests are appointed for life, and they were not made removable at pleasure by the Synod of Maynooth. We now answer: The Synod of Maynooth insinuates that in the dismissal of parish priests the forms of regular canonical trials cannot be observed in every particular, and seems to leave the determination of the particular mode of conducting trials to the provincial councils of the respective provinces. However, it refers to the mode adopted in England, and would, therefore, seem to recommend that parish priests in Ireland be finally dismissed upon trial to be conducted by the committee of investigation of the diocese, composed of five priests."[11]

## DIFFERENCE BETWEEN THE CELEBRATION AND BLESSING OF A MARRIAGE.

($\nu$) *n.* 659.

We distinguish, as will be observed (n. 659), between "assisting at" and "blessing" a marriage. For by the blessing of the marriage is not meant the celebration of the marriage itself or the act of uniting in marriage, nor the verses *Confirma hoc*, etc., with the prayer *Respice*, which are always said after the blessing and the giving of the nuptial

[11] Syn. Pl. Mayn., n. 261; cf. ib., p. 248.

ring, but those prayers which the missal prescribes in the Mass "pro sponso et sponsa." This blessing (*benedictio nuptialis*) or the one that takes its place on days impeded by the Rubrics, can be given only in the Mass "pro sponso et sponsa"; it is distinct and separable from the celebration of the marriage. Thus, the marriage itself may be performed by one priest, and the nuptial blessing given by another.

### CAN NON-CATHOLICS BE SOMETIMES BURIED IN CATHOLIC CEMETERIES?

(ξ) *n.* 661.

In the United States Catholics having family lots in Catholic cemeteries sometimes wish to have non-Catholic relatives or members of the family buried in such lots. Can it be allowed? Some say yes, in view of the words of the Fathers of the Second Plenary Council of Baltimore:[14] "Ex mente Sedis Apostolicae toleratur, ut in sepulchris gentilitiis (*family lots*), quae videlicet privata et peculiaria pro Catholicis laicorum familiis aedificantur, cognatorum et affinium etiam Acatholicorum corpora tumulentur." Others maintain the negative, except in regard to family vaults or vaulted sepulchres for families.

(*o*) *n.* 659.

Father Perrone demonstrates that the true teaching (*doctrina vera*) is that both mixed marriages and the marriages of Protestants among themselves, in places where the decree *Tametsi* obtains, when solemnized contrary to the prescriptions of this decree, are invalid,[15] unless, by a special and express indult of the Holy See, the declaration of Benedict XIV. regarding marriages in Holland and Belgium has been extended to such places.[16] So far as the U. S. are concerned, it seems that the declaration of Pope Benedict XIV. has been extended to nearly all, if not all, places where the decree *Tametsi* obtains.

[14] N. 389. [15] Perrone, De Matr. Christ, vol. ii., p. 230. [16] Ib., pp. 209–239.

# APPENDIX.

## I.

## CONSTITUTIO SS. D. N. PII PP. IX., QUA NUMERUS CENSURARUM LATAE SENTENTIAE RESTRINGITUR.

D. 12. OCT., 1869.

### PIUS EPISCOPUS SERVUS SERVORUM DEI AD PERPETUAM REI MEMORIAM.

Apostolicae Sedis moderationi convenit, quae salubriter veterum canonum auctoritate constituta sunt, sic retinere, ut, si temporum rerumque mutatio quidpiam esse temperandum prudenti dispensatione suadeat, eadem Apostolica Sedes congruum supremae suae potestatis remedium ac providentiam impendat. Quamobrem cum animo nostro jampridem revolveremus, ecclesiasticas censuras, quae per modum latae sententiae ipsoque facto incurrendae ad incolumitatem ac disciplinam ipsius Ecclesiae tutandam, effrenemque improborum licentiam coercendam et emendandam sancte per singulas aetates indictae ac promulgatae sunt, magnum ad numerum sensim excrevisse; quasdam etiam, temporibus moribusque mutatis, a fine atque causis, ob quas impositae fuerant, vel a pristina utilitate atque opportunitate excidisse; eamque ob rem non infrequentes oriri sive in iis, quibus animarum cura commissa est, sive in ipsis fidelibus dubietates, anxietates angoresque conscientiae; nos ejusmodi incommodis occurrere volentes, plenam earumdem recensionem fieri nobisque proponi jussimus, ut, diligenti adhibita consideratione, statueremus, quasnam ex illis servare ac retinere oporteret, quas vero moderari aut abrogare congrueret. Ea igitur recensione peracta, ac venerabilibus fratribus nostris S. R. E. cardinalibus in negotiis fidei generalibus inquisitoribus per universam Christianam rempublicam deputatis in consilium adscitis, reque diu ac mature perpensa, motu proprio, certa scientia, matura deliberatione nostra, deque apostolicae nostrae potestatis plenitudine hac perpetuo valitura Constitutione decernimus, ut ex quibuscumque censuris, sive excommunicationis, sive suspensionis, sive interdicti, quae per modum latae sententiae ipsoque facto incurrendae hactenus impositae sunt, nonnisi illae, quas in hac

ipsa Constitutione inserimus, eoque modo, quo inserimus, robur exinde habeant; simul declarantes, easdem non modo ex veterum canonum auctoritate, quatenus cum hac nostra Constitutione conveniunt, verum etiam ex hac ipsa Constitutione nostra, non secus ac si primum editae ab ea fuerint, vim suam prorsus accipere debere.

## *Excommunicationes Latae Sententiae Speciali Modo Romano Pontifici Reservatae.*

Itaque excommunicationi latae sententiae speciali modo Romano Pontifici reservatae subjacere declaramus:

I. Omnes a Christiana fide apostatas, et omnes ac singulos haereticos, quocumque nomine censeantur, et cujuscumque sectae existant, eisque credentes, eorumque receptores, fautores, ac generaliter quoslibet illorum defensores.

II. Omnes et singulos scienter legentes sine auctoritate Sedis Apostolicae libros eorumdem apostatarum et haereticorum haeresim propugnantes, necnon libros cujusvis auctoris per Apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes et quomodolibet defendentes.

III. Schismaticos et eos, qui a Romani Pontificis pro tempore existentis obedientia pertinaciter se subtrahunt vel recedunt.

IV. Omnes et singulos, cujuscumque status, gradus seu conditionis fuerint, ab ordinationibus seu mandatis Romanorum Pontificum pro tempore existentium ad universale futurum concilium appellantes, necnon eos, quorum auxilio, consilio vel favore appellatum fuerit.

V. Omnes interficientes, mutilantes, percutientes, capientes, carcerantes, detinentes, vel hostiliter insequentes S. R. E. cardinales, patriarchas, archiepiscopos, episcopos, Sedisque Apostolicae legatos, vel nuncios, aut eos a suis dioecesibus, territoriis, terris, seu dominiis ejicientes, necnon ea mandantes, vel rata habentes, seu praestantes in eis auxilium, consilium vel favorem.

VI. Impedientes directe vel indirecte exercitium jurisdictionis ecclesiasticae sive interni sive externi fori, et ad hoc recurrentes ad forum saeculare ejusque mandata procurantes, edentes, aut auxilium, consilium vel favorem praestantes.

VII. Cogentes, sive directe sive indirecte, judices laicos ad trahendum ad suum tribunal personas ecclesiasticas praeter canonicas dispositiones: item edentes leges vel decreta contra libertatem aut jura Ecclesiae.

VIII. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quaelibet a Sede Apostolica, vel ab ejusdem legatis aut delegatis quibuscumque profecta eorumque promulgationem vel executionem directe vel indirecte prohibentes, aut eorum causa sive ipsas partes, sive alios laedentes, vel perterrefacientes.

IX. Omnes falsarios litterarum apostolicarum, etiam in forma brevis ac supplicationum gratiam vel justitiam concernentium per Romanum Pontificem, vel S. R. E. vice-cancellarios seu gerentes vices eorum aut de mandato ejusdem Romani Pontificis signatarum: necnon falso publicantes litteras apostolicas, etiam in forma brevis, et etiam falso signantes supplicationes hujusmodi sub nomine Romani Pontificis, seu vice-cancellarii aut gerentis vices praedictorum.

X. Absolventes complicem in peccato turpi etiam in mortis articulo, si alius sacerdos licet non adprobatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo, possit excipere morientis confessionem.

XI. Usurpantes aut sequestrantes jurisdictionem, bona, reditus ad personas ecclesiasticas ratione suarum Ecclesiarum aut beneficiorum pertinentes.

XII. Invadentes, destruentes, detinentes per se vel per alios civitates, terras, loca aut jura ad Ecclesiam Romanam pertinentia; vel usurpantes, perturbantes, retinentes supremam jurisdictionem in eis; necnon ad singula praedicta auxilium, consilium, favorem praebentes.[1]

A quibus omnibus excommunicationibus huc usque recensitis absolutionem Romano Pontifici pro tempore speciali modo reservatam esse et reservari; et pro ea generalem concessionem absolvendi a casibus et censuris sive excommunicationibus Romano Pontifici reservatis nullo pacto sufficere declaramus, revocatis insuper earumdem respectu quibuscumque indultis concessis sub quavis forma et quibusvis personis etiam regularibus cujuscumque ordinis, congregationis, societatis et instituti, etiam speciali mentione dignis et in quavis dignitate constitutis Absolvere autem praesumentes sine debita facultate, etiam quovis praetextu, excommunicationis vinculo Romano Pontifici reservatae innodatos se sciant, dummodo non agatur de mortis articulo, in quo tamen firma sit quoad absolutos obligatio standi mandatis Ecclesiae, si convaluerint.

[1] To the above twelve cases Pius IX., in his *C. Romanus Pontifex*, Aug. 28, 1873, added a thirteenth, which the following persons incur: 1. Canonici ac dignitates cathedralium ecclesiarum vacantium, qui ausi fuerint concedere et transferre ecclesiae vacantis curam, regimen et administrationem, sub quovis titulo, nomine, quaesito colore . in nominatum et praesentatum a laica potestate ex S. Sedis concessione seu privilegio. vel, ubi consuetudo viget, a capitularibus ipsis electum ad eandem ecclesiam vacantem. 2 Nominati et praesentati vel ut supra electi, ad vacantes ecclesias, qui earum curam, regimen et administrationem suscipere audent. . . . 3. Ii omnes, qui praemissis paruerint, vel auxilium, consilium aut favorem praestiterint, cujuscunque status, conditionis, praeëminentiae et dignitatis fuerint (supra, n. 287-294 and n. 637, note 33; Konings, n. 1717). A fourteenth, which was added by decision of the S Poenit, Aug. 4, 1876, is against the members, propagators, adherents, and favorers (in any manner) of the "Societa Cattolica Italiana per la rivendicazione dei diritti spettanti al popolo christiano ed in ispecie al popolo romano"—a society recently established in Italy for the purpose of giving the Roman people a voice in the election of the Sovereign Pontiff, by means of popular suffrage (Nouv. Rev. Theol., p. 462 seq, livr. 5e., 1876). Hence, as we said (supra, n. 681), there are at present fourteen excommunications reserved, *speciali modo*, to the Roman Pontiff.

## *Excommunicationes Latae Sententiae Romano Pontifici (simpliciter) Reservatae.*

Excommunicationi latae sententiae Romano Pontifici reservatae subjacere declaramus:

I. Docentes vel defendentes sive publice, sive privatim propositiones ab Apostolica Sede damnatas sub excommunicationis poena latae sententiae; item docentes vel defendentes tamquam licitam praxim inquirendi a poenitente nomen complicis prouti damnata est a Benedicto XIV. in Const. *Suprema*, 7 Julii, 1744; *Ubi primum*, 2 Junii, 1746; *Ad eradicandum*, 28 Septembris, 1746.

II. Violentas manus, suadente diabolo, injicientes in clericos, vel utriusque sexus monachos, exceptis quoad reservationem casibus et personis, de quibus jure vel privilegio permittitur, ut episcopus aut alius absolvat.

III. Duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes, et quoslibet complices, vel qualemcumque operam aut favorem praebentes, necnon de industria spectantes, illudque permittentes, vel quantum in illis est, non prohibentes, cujuscumque dignitatis sint, etiam regalis vel imperialis.

IV. Nomen dantes sectae *Massonicae*, aut *Carbonariae*, aut aliis ejusdem generis sectis, qua contra Ecclesiam vel legitimas potestates seu palam seu clandestine machinantur, necnon iisdem sectis favorem qualemcumque praestantes, earumve occultos coryphaeos ac duces non denunciantes, donec denunciaverint.

V. Immunitatem asyli ecclesiastici violare jubentes, aut ausu temerario violantes.

VI. Violantes clausuram monialium, cujuscumque generis aut conditionis, sexus vel aetatis fuerint, in earum monasteria absque legitima licentia ingrediendo; pariterque eos introducentes vel admittentes; itemque moniales ab illa exeuntes extra casus ac formam a S. Pio V. in Constit. *Decori* praescriptam.

VII. Mulieres violantes regularium virorum clausuram, et superiores aliosve eas admittentes.

VIII. Reos simoniae realis in beneficiis quibuscumque, eorumque complices.

IX. Reos simoniae confidentialis in beneficiis quibuslibet, cujuscumque sint dignitatis.

X. Reos simoniae realis ob ingressum in religionem.

XI. Omnes, qui quaestum facientes ex indulgentiis aliisque gratiis spiritualibus, excommunicationis censura plectuntur Constitutione S. Pii V. *Quam plenum*, 2 Januarii, 1554.

XII. Colligentes eleemosynas majoris pretii pro missis, et ex iis lucrum

captantes, faciendo eas celebrari in locis, ubi missarum stipendia minoris pretii esse solent.

XIII. Omnes, qui excommunicatione mulctantur in Constitutionibus S. Pii V., *Admonet nos*, quarto kalendas Aprilis, 1567; Innocentii IX., *Quae ab hac Sede*, pridie nonas Novembris, 1591; Clementis VIII., *Ad Romani Pontificis curam*, 26 Junii, 1592; et Alexandri VII., *Inter ceteras*, nono kalendas Novembris, 1660, alienationem et infeudationem civitatum et locorum S. R. E. respicientibus.

XIV. Religiosos praesumentes clericis aut laicis extra casum necessitatis sacramentum Extremae Unctionis aut Eucharistiae per viaticum ministrare absque parochi licentia.

XV. Extrahentes absque legitima venia reliquias ex sacris coemeteriis sive catacumbis urbis Romae ejusque territorii, eisque auxilium vel favorem praebentes.

XVI. Communicantes cum excommunicato nominatim a Papa in crimine criminoso, ei scilicet impendendo auxilium vel favorem.

XVII. Clericos scienter et sponte communicantes in divinis cum personis a Romano Pontifice nominatim excommunicatis et ipsos in officiis recipientes.[1]

## *Excommunicationes Latae Sententiae Episcopis sive Ordinariis Reservatae.*

Excommunicationi latae sententiae episcopis sive ordinariis reservatae subjacere declaramus:

I. Clericos in sacris constitutos vel regulares aut moniales post votum solemne castitatis matrimonium contrahere praesumentes; necnon omnes cum aliqua ex praedictis personis matrimonium contrahere praesumentes.

II. Procurantes abortum, effectu sequuto.

III. Litteris apostolicis falsis scienter utentes, vel crimini ea in re cooperantes.

## *Excommunicationes Latae Sententiae Nemini Reservatae.*

Excommunicationi latae sententiae nemini reservatae subjacere declaramus:

[1] To the above seventeen cases must be added three additional excommunications—namely, against, 1, absolvere praesumentes sine debita facultate, etiam quovis praetextu, excommunicationis vinculo specialiter reservatae innodatos (supra, excomm. speciali modo R. P. reservatae, xii., § A quibus . . .) 2. Ecclesiasticos et missionarios in Indiis orientalibus mercaturae operam dantes (C. S. O., Dec. 4, 1872). 3. Against those who adhere to, *i.e.*, formally approve internally and externally, those crimes which are punished with the twelfth excommunication reserved *speciali modo*, to the Pope (Encycl. Pii PP. IX., Nov. 1, 1870, ap. Konings, n. 1732). Altogether therefore, there are now, as we have elsewhere (supra, n. 681) said, twenty excommunications reserved *simpliciter* to the Holy See.

I. Mandantes seu cogentes tradi ecclesiasticae sepulturae haereticos notorios aut nominatim excommunicatos vel interdictos.

II. Laedentes aut perterrefacientes inquisitores, denuntiantes, testes, aliosve ministros S. Officii, ejusve sacri tribunalis scripturas diripientes, aut comburentes, vel praedictis quibuslibet auxilium, consilium, favorem praestantes.

III. Alienantes et recipere praesumentes bona ecclesiastica absque beneplacito apostolico, ad formam extravagantis *Ambitiosae*, De Reb. Ecc. non alienandis.

IV. Negligentes sive culpabiliter omittentes denunciare infra mensem confessarios sive sacerdotes, a quibus sollicitati fuerint ad turpia in quibuslibet casibus expressis a Praedecess. Nostris Gregorio XV. Constit. *Universi*, 20 Augusti, 1622, et Benedicto XIV. Constit. *Sacramentum poenitentiae*, 1 Junii, 1741.

Praeter hos hactenus recensitos, eos quoque, quos sacrosanctum Concilium Tridentinum, sive reservata Summo Pontifici aut ordinariis absolutione, sive absque ulla reservatione excommunicavit, nos pariter excommunicatos esse declaramus; excepta anathematis poena in Decreto sess. iv. *De editione et usu Sacrorum Librorum* constituta, cui illos tantum subjacere volumus, qui libros de rebus sacris tractantes sine ordinarii approbatione imprimunt, aut imprimi faciunt.

## *Suspensiones Latae Sententiae Summo Pontifici Reservatae.*

I. Suspensionem ipso facto incurrunt a suorum beneficiorum perceptione ad beneplacitum S. Sedis capitula et conventus ecclesiarum et monasteriorum aliique omnes, qui ad illarum seu illorum regimen et administrationem recipiunt episcopos aliosve praelatos de praedictis ecclesiis seu monasteriis apud eamdem S. Sedem quovis modo provisos, antequam ipsi exhibuerint litteras apostolicas de sua promotione.

II. Suspensionem per triennium a collatione ordinum ipso jure incurrunt aliquem ordinantes absque titulo beneficii vel patrimonii cum pacto, ut ordinatus non petat ab ipsis alimenta.

III. Suspensionem per annum ab ordinum administratione ipso jure incurrunt ordinantes alienum subditum etiam sub praetextu beneficii statim conferendi, aut jam collati, sed minime sufficientis, absque ejus episcopi litteris dimissorialibus, vel etiam subditum proprium, qui alibi tanto tempore moratus sit, ut canonicum impedimentum contrahere ibi potuerit, absque ordinarii ejus loci litteris testimonialibus.

IV. Suspensionem per annum a collatione ordinum ipso jure incurrit, qui excepto casu legitimi privilegii, ordinem sacrum contulerit absque titulo beneficii vel patrimonii clerico in aliqua congregatione viventi, in qua solemnis professio non emittitur, vel etiam religioso nondum professo.

V. Suspensionem perpetuam ab exercitio ordinum ipso jure incurrunt religiosi ejecti, extra religionem degentes.

VI. Suspensionem ab ordine suscepto ipso jure incurrunt, qui eumdem ordinem recipere praesumpserunt ab excommunicato vel suspenso, vel interdicto nominatim denunciatis, aut ab haeretico vel schismatico notorio: eum vero, qui bona fide a quopiam eorum est ordinatus, exercitium non habere ordinis sic suscepti, donec dispensetur declaramus

VII. Clerici saeculares exteri ultra quatuor menses in urbe commorantes, ordinati ab alio quam ab ipso suo ordinario absque licentia Card. Urbis Vicarii, vel absque praevio examine coram eodem peracto vel etiam a proprio ordinario, posteaquam in praedicto examine rejecti fuerint; necnon clerici pertinentes ad aliquem e sex episcopatibus suburbicariis, si ordinentur extra suam dioecesim, dimissorialibus sui ordinarii ad alium directis quam ad Card. Urbis Vicarium; vel non praemissis ante ordinem sacrum suscipiendum exercitiis spiritualibus per decem dies in domo urbana sacerdotum a missione nuncupatorum, suspensionem ab ordinibus sic susceptis ad beneplacitum S. Sedis ipso jure incurrunt, episcopi vero ordinantes ab usu Pontificalium per annum.

### *Interdicta Latae Sententiae Reservata.*

I. Interdictum Romano Pontifici speciali modo reservatum ipso jure incurrunt universitates, collegia et capitula, quocumque nomine nuncupentur, ab ordinationibus seu mandatis ejusdem Romani Pontificis pro tempore existentis ad universale futurum concilium appellantia.

II. Scienter celebrantes vel celebrari facientes divina in locis ab ordinario, vel delegato judice, vel a jure interdictis, aut nominatim excommunicatos ad divina officia, seu ecclesiastica sacramenta, vel ecclesiasticam sepulturam admittentes, interdictum ab ingressu Ecclesiae ipso jure incurrunt, donec ad arbitrium ejus, cujus sententiam contempserunt, competenter satisfecerint.

Denique quoscumque alios sacrosanctum Concilium Tridentinum suspensos aut interdictos ipso jure esse decrevit, nos pari modo suspensioni vel interdicto eosdem obnoxios esse volumus et declaramus.

Quae vero censurae sive excommunicationis, sive suspensionis, sive interdicti nostri aut praedecessorum nostrorum constitutionibus, aut sacris canonibus praeter eas, quas recensuimus, latae sunt, atque hactenus in suo vigore perstiterunt sive pro R. Pontificis electione, sive pro interno regimine quorumcumque ordinum et institutorum regularium, necnon quorumcumque collegiorum, congregationum, coetuum locorumque piorum cujuscumque nominis aut generis sint, eas omnes firmas esse, et in suo robore permanere volumus et declaramus.

Ceterum decernimus, in novis quibuscumque concessionibus ac privilegiis, quae ab Apostolica Sede concedi cuivis contigerit, nullo modo ac

ratione intelligi unquam debere, aut posse comprehendi facultatem absolvendi a casibus et censuris quibuslibet Romano Pontifici reservatis, nisi de iis formalis, explicita ac individua mentio facta fuerit: quae vero privilegia aut facultates, sive a praedecessoribus nostris, sive etiam a nobis cuilibet coetui, ordini, congregationi, societati et instituto, etiam regulari cujusvis speciei, etsi titulo peculiari praedito, atque etiam speciali mentione digno a quovis unquam tempore huc usque concessae fuerint, ea omnia, easque omnes nostra constitutione revocatas, suppressas, et abolitas esse volumus, prout reapse revocamus, supprimimus et abolemus, minime refragantibus aut obstantibus privilegiis quibuscumque, etiam specialibus comprehensis, vel non in corpore juris, aut apostolicis constitutionibus, et quavis confirmatione apostolica, vel immemorabili etiam consuetudine, aut alia quacumque firmitate roboratis, quibuslibet etiam formis ac tenoribus, et cum quibusvis derogatoriarum derogatoriis, aliisque efficacioribus et insolitis clausulis, quibus omnibus, quatenus opus sit, derogare intendimus, et derogamus.

Firmam tamen esse volumus absolvendi facultatem a Tridentina Synodo episcopis concessam, sess. xxiv., cap. vi., *De Reform.*, in quibuscumque censuris Apostolicae Sedi hac nostra Constitutione reservatis, iis tantum exceptis, quas eisdem Apostolicae Sedi speciali modo reservatas declaravimus.

Decernentes has litteras, atque omnia et singula, quae in eis constituta ac decreta sunt omnesque et singulas, quae in eisdem factae sunt ex anterioribus constitutionibus praedecessorum nostrorum, atque etiam nostris, aut ex aliis sacris canonibus quibuscumque, etiam Conciliorum Generalium, et ipsius Tridentini mutationes, derogationes, suppressiones atque abrogationes ratas et firmas, ac respective rata atque firma esse et fore, suosque plenarios et integros effectus obtinere debere, ac reapse obtinere; sicque et non aliter in praemissis per quoscumque judices ordinarios, et delegatos, etiam causarum Palatii Apostolici auditores, ac S. R. E. cardinales, etiam de latere legatos, ac Apostolicae Sedis nuntios, ac quovis alios quacumque praeeminentia ac potestate fungentes, et functuros, sublata eis, et eorum cuilibet quavis aliter judicandi et interpretandi facultate et auctoritate, judicari ac definiri debere; et irritum atque inane esse ac fore quidquid super his a quoquam quavis auctoritate, etiam praetextu cujuslibet privilegii, aut consuetudinis inductae vel inducendae, quam abusum esse declaramus, scienter vel ignoranter contigerit attentari.

Non obstantibus praemissis, aliisque quibuslibet ordinationibus, constitutionibus, privilegiis, etiam speciali et individua mentione dignis, necnon consuetudinibus quibusvis, etiam immemorabilibus, ceterisque contrariis quibuscumque.

Nulli ergo omnino hominum liceat hanc paginam nostrae constitutionis, ordinationis, limitationis, suppressionis, derogationis, voluntatis infringere,

vel ei ausu temerario contraire. Si quis autem hoc attentare praesumpserit, indignationem Omnipotentis Dei et Beatorum Petri et Pauli, apostolorum ejus, se noverit incursurum.

Datum Romae apud S. Petrum anno incarnationis Dominicae millesimo octingentesimo sexagesimo nono, quarto idus Octobris, Pontificatus nostri anno vigesimo quarto.

MARIUS CARD. MATTEI, *Pro-Datarius.*
N. CARD. PARACCIANI CLARELLI.
*Visa de Curia:* DOMINICUS BRUTI.
Loco + Plumbi. J. CUGNONI.

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II.

## DECISIO S. POENITENTIARIAE CIRCA JEJUNIUM.

EMINENTISSIME PRINCEPS: Quidam sacerdotes regnorum Belgii et Hollandiae, ad tranquillitatem conscientiae suae et ad certam fidelium directionem, instanter petunt ab Eminentia Vestra solutionem sequentium dubiorum:

Gury, Scavini et alii referunt tanquam responsa S. Poenitentiariae data die 16 Jan., 1834:

"Posse personis quae sunt in potestate patrisfamilias, cui facta est legitima facultas edendi carnes, permitti uti cibis patrifamilias indultis, abjecta conditione de non permiscendis licitis atque interdictis epulis et de unica comestione in die, iis qui jejunare tenentur."

Igitur quaeritur: 1. An haec resolutio valeat ubique terrarum? 2 Dum dicitur *permitti posse*, petitur a quo ista permissio danda sit, et an sufficiat permissio data a simplici confessario?

Altera resolutio: "Fideles qui ratione aetatis vel laboris jejunare non tenentur, licite posse in Quadragesima, dum indultum concessum est, omnibus diebus indulto comprehensis, vesci carnibus aut lacticiniis per idem indultum permissis, quoties per diem edunt."

Dubitatur igitur an haec resolutio valeat in dioecesi cujus episcopus auctoritate apostolica concedit fidelibus ut, feria 2a, 3a, 5a temporis Quadragesimae, possint semel in die vesci carnibus et ovis, iis vero qui ratione aetatis vel laboris jejunare non tenentur, permittit ut ovis saepius in die utantur.

Quaeritur itaque: 1. An non obtantibus memorata phrasi *ovis saepius in die utantur*, et tenore concessionis, possint ii, qui ratione aetatis vel laboris jejunare non tenentur, vi dictae resolutionis vesci carnibus quoties per diem edunt? 2. An iis, qui jejunare non tenentur ratione aetatis vel laboris, aequiparandi sint qui ratione infirmae valetudinis a jejunio excusantur, adeo ut istis quoque pluries in die vesci carnibus liceat?

S. Poenitentiaria, mature consideratis propositis dubiis, dilecto in Christo oratori in primis respondet transmittendo declarationem ab ipsa S. Poenitentiaria alias datam, scilicet: "Ratio permissionis de qua in resolutione data a S. Poenitentiaria, 16 Januarii, 1834, non est indultum patrifamilias concessum, sed impotentia, in qua versantur filiifamilias, observandi praeceptum."

Deinde ad duo priora dubia respondet: Quoad primum, *affirmative.* Quoad secundum, *sufficere permissionem fa tam a simplici confessario.*

Ad duo vero posteriora dubia respondet: Quoad primum, *negative;* quod secundum, *non aequiparari.*

Datum Romae in S. Poenitentiaria, die 27 Maii, 1863.

A.-M. Card. Cagiano, *M. P.*

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## III.

## INSTRUCTIO DE SCHOLIS PUBLICIS AD RMOS EPISCOPOS IN FOEDERATIS STATIBUS AMERICAE SEPTEMTRIONALIS.

Pluries S. Congregatio de Propaganda Fide certior facta est in Foederatis Statibus Americae Septemtrionalis Catholicae juventuti e sic dictis scholis publicis gravissima damna imminere. Tristis quocirca hic nuntius effecit, ut praedicta S. Congregatio amplissimis istius ditionis episcopis nonnullas quaestiones proponendas censuerit, quae partim ad causas cur fideles sinant liberos suos scholas acatholicas frequentare, partim ad media quibus facilius juvenes e scholis hujusmodi arceri possint, spectabant. Porro responsiones a laudatis episcopis exaratae ad Supremam Congregationem Universalis Inquisitionis pro natura argumenti delatae sunt, et negotio diligenter explorato Feria IV., die 30 Junii, 1875, per instructionem sequentem absolvendum ab Emis Patribus judicatum est, quam exinde SS. Dnus Noster Feria IV., die 24 Novembris praedicti anni adprobare ac confirmare dignatus est.

Porro in deliberatione imprimis cadere debebat ipsa juventutis instituendae ratio scholis hujusmodi propria atque peculiaris. Ea vero S. Congregationi visa est etiam ex se periculi plena, ac perquam adversa rei catholicae. Alumni enim talium scholarum cum propria earumdem ratio omnem excludat doctrinam religionis, neque rudimenta fidei addiscent, neque Ecclesiae instruentur praeceptis, atque adeo carebunt cognitione homini quam maxime necessaria, sine qua Christiane non vivitur. Enimvero in ejusmodi scholis juvenes educantur jam inde a prima pueritia, ac propemodum a teneris unguiculis: qua aetate, ut constat, virtutis ac vitii semina tenaciter haerent. Aetas igitur tam flexibilis si absque religione adolescat, sane ingens malum est. Porro

autem in praedictis scholis, utpote sejunctis ab Ecclesiae auctoritate, indiscriminatim ex omni secta magistri adhibentur, et certeroquin ne perniciem afferant juventuti nulla lege cautum est, ita ut liberum sit errores et vitiorum semina teneris mentibus infundere. Certa item corruptela insuper ex hoc impendet, quod in iisdem scholis aut saltem pluribus earum, utriusque sexus adolescentes, et audiendis lectionibus in idem conclave congregantur, et sedere in eodem scamno, masculi juxta feminas jubentur: quae omnia efficiunt ut juventus misere exponatur damno circa fidem, ac mores periclitentur. Hoc autem periculum perversionis nisi e proximo remotum fiat, tales scholae tuta conscientia frequentari nequeunt. Id vel ipsa clamat lex naturalis et divina. Id porro claris verbis Summus Pontifex edixit, Friburgensi quondam Archiepiscopo die 14 Julii, 1864, ita scribens: *Certe quidem ubi in quibuscumque locis regionibusque perniciosissimum hujusmodi vel susciperetur, vel ad exitum perduceretur consilium expellendi a scholis Ecclesiae auctoritatem, et juventus misere exponeretur damno circa fidem, tunc Ecclesia non solum deberet instantissimo studio omnia conari, nullisque curis parcere, ut eadem juventus necessariam Christianam institutionem, et educationem habeat, verum etiam cogeretur omnes fideles monere, eisque declarare ejusmodi scholas Ecclesiae Catholicae adversas haud posse in conscientia frequentari.* Et haec quidem utpote fundata jure naturali ac divino, generale quoddam enunciant principium, vimque universalem habent, et ad eas omnes pertinent regiones, ubi perniciosissima hujusmodi juventutis instituendae ratio infeliciter invecta fuerit. Oportet igitur ut praesules amplissimi, quacumque possint ope atque opera, commissum sibi gregem arceant ab omni contagione scholarum publicarum. Est autem ad hoc, omnium consensu, nil tam necessarium, quam ut Catholici ubique locorum proprias sibi scholas habeant, easque publicis scholis haud inferiores. Scholis ergo Catholicis, sive condendis, ubi defuerint, sive amplificandis, et perfectius instruendis parandisque, ut institutione ac disciplina scholas publicas adaequent, omni cura prospiciendum est. Ac tam sancto quidem exequendo consilio, tamque necessario haud inutiliter adhibebuntur, si episcopis visum fuerit, e congregationibus religiosis sodales sive viri sive mulieres; sumptusque tanto operi necessarii ut eo libentius atque abundantius suppeditentur a fidelibus, opportune oblata occasione, sive concionibus, sive privatis colloquiis, serio necesse est, ut ipsi commonefiant sese officio suo graviter defecturos, nisi omni qua possunt cura, impensque, scholis Catholicis provideant. De quo potissimum monendi erunt quotquot inter Catholicos ceteris praestant divitiis ac auctoritate apud populum, quique comitiis ferendis legibus sunt adscripti. Et vero in istis regionibus nulla obstat lex civilis quominus Catholici, ut ipsis visum fuerit, propriis scholis prolem suam ad omnem scientiam ac pietatem erudiant. Est ergo in potestate positum ipsius populi Catholici ut feliciter avertatur clades, quam scholarum illic publicarum institutum rei Catholicae minatur. Religio autem ac pietas ne a scholis vestris expellantur, id omnes persuadeant sibi plurimum interesse, non singulorum tantum civium ac

familiarum, verum etiam ipsius florentissimae Americanae nationis, quae tantam de se spem Ecclesiae dedit.

Ceterum S. Congregatio non ignorat talium interdum rerum esse adjuncta, ut parentes Catholici prolem suam scholis publicis committere in conscientia possint. Id autem non poterunt, nisi ad sic agendum sufficientem causam habeant; ac talis causa sufficiens in casu aliquo particulari utrum adsit necne, id conscientiae ac judicio Episcoporum relinquendum erit; et juxta relata tunc ea plerumque aderit, quando vel nulla praesto est schola Catholica, vel quae suppetit parum est idonea erudiendis convenienter conditioni suae, congruenterque adolescentibus.

Quae autem ut scholae publicae in conscientia adiri possint, periculum perversionis cum propria ipsarum ratione plus minusve nunquam non conjunctum, opportunis remediis cautionibusque, fieri debet ex proximo remotum. Est ergo imprimis videndum utrumne in schola, de qua adeunda quaeritur, perversionis periculum sit ejusmodi, quod fieri remotum plane nequeat: velut quoties ibi aut docentur quaedam, aut aguntur, Catholicae doctrinae bonisve moribus contraria, quaeque citra animae detrimentum, neque audiri possunt, nedum peragi. Enimvero tale periculum, ut per se patet, omnino vitandum est quocumque damno etiam vitae.

Debet porro juventus ut committi scholis publicis in conscientia possit, necessariam Christianam institutionem et educationem saltem extra scholae tempus rite ac diligentere accipere. Quare parochi et missionarii, memores eorum, quae providentissime hac de re Concilium Baltimorense constituit, catechesibus diligenter dent operam, iisque explicandis praecipue incumbant veritatibus fidei ac morum, quae magis ab incredulis et heterodoxis impetuntur; totque periculis expositam juventutem impensa cura, qua frequenti sacramentorum usu, qua pietate in Beatam Virginem studeant communire, et ad religionem firmiter tenendam etiam atque etiam excitent. Ipsi vero parentes, quive eorum loco sunt, liberis suis sollicite invigilent, ac vel ipsi per se, vel, si minus idonei ipsi sint, per alios, de lectionibus auditis eos interrogent, libros iisdem traditos recognoscant, et si quid noxium ibi deprehenderint, antidota praebeant, eosque a familiaritate et consortio condiscipulorum, a quibus fidei vel morum periculum imminere possit, seu quorum corrupti mores fuerint, omnino arceant atque prohibeant.

Hanc autem necessariam Christianam institutionem et educationem liberis suis impertire quotquot parentes negligunt: aut qui frequentare illos sinunt tales scholas, in quibus animarum ruina evitari non potest: aut tandem qui, licet schola Catholica in eodem loco idonea sit, apteque instructa et parata, seu quamvis facultatem habeant in alia regione prolem Catholice educandi, nihilominus committunt eam scholis publicis, sine sufficiente causa ac sine necessariis cautionibus, quibus periculum perversionis e proximo remotum fiat: eos, si contumaces fuerint, absolvi non posse in sacramento poenitentiae ex doctrina morali Catholica manifestum est.

# IV.

## THE SYMBOL OF POPE PIUS IV., AS AMENDED BY POPE PIUS IX.

(*y*) n. 326, 664.

DECRETUM.

Quod a priscis Ecclesiae temporibus semper fuit in more, ut christifidelibus certa proponeretur ac determinata formula, qua fidem profiterentur, atque invalescentes cujusque aetatis haereses solemniter detestarentur, idipsum, sacrosancta Tridentina Synodo feliciter absoluta, sapienter praestitit Summus Pontifex Pius IV., qui Tridentinorum Patrum decreta incunctanter exequi properans, edita Idibus Novembris, 1564, Constitutione *Injunctum Nobis*, formam concinnavit professionis fidei recitandam ab iis, qui cathedralibus et superioribus Ecclesiis praeficiendi forent, quive illarum dignitates, canonicatus, aliaque beneficia ecclesiastica quaecumque curam animarum habentia essent consecuturi, et ab omnibus aliis, ad quos ex decretis ipsius concilii spectat: necnon ab iis, quos de monasteriis, conventibus, domibus, et aliis quibuscumque locis regularium quorumcumque ordinum, etiam militarium, quocumque nomine vel titulo provideri contingeret. Quod et alia Constitutione edita eodem die et anno incipiente *In sacrosancto*, salubriter praeterea extendit ad omnes doctores, magistros, regentes, vel alios cujuscumque artis et facultatis professores, sive clericos sive laicos, vel cujusvis ordinis regularis, quibuslibet in locis publice vel privatim quoquomodo profitentes, seu lectiones aliquas habentes vel exercentes, ac tandem ad ipsos hujusmodi gradibus decorandos.

Jam vero, cum postmodum coadunatum fuerit sacrosanctum Concilium Vaticanum, et ante ejus suspensionem per Literas Apostolicas *Postquam Dei Munere* diei 20 Octobris, 1870, indictam, binae ab eodem solemniter promulgatae sint dogmaticae Constitutiones, prima scilicet de Fide Catholica, quae incipit *Dei Filius*, et altera de Ecclesia Christi, quae incipit *Pastor aeternus*, non solum opportunum, sed etiam necessarium dijudicatum est, ut in fidei professione dogmaticis quoque praememorati Vaticani Concilii definitionibus, prout corde, ita et ore publica solemnisque fieri deberet adhaesio. Quapropter Sanctissimus D. N. Pius Papa IX., exquisito ea desuper re voto specialis Congregationis Emorum S. R. E. Patrum Cardinalium, statuit, praecepit, atque mandavit, ceu per praesens decretum praecipit, ac mandat, ut in praecitata Piana formula professionis fidei, post verba "praecipue a sacrosancta Tridentina Synodo" dicatur "*et ab Oecumenico Concilio Vaticano tradita, definita ac declarata, praesertim de Romani Pontificis Primatu et Infallibili Magisterio*" utque in posterum fidei professio ab omnibus, qui eam emittere tenentur, sic et

non aliter emittatur, sub comminationibus ac poenis a Concilio Tridentino et a supradictis Constitutionibus S. M. Pii IV. statutis. Id igitur ubique, et ab omnibus, ad quos spectat, diligenter ac fideliter observetur, non obstantibus, etc.

Datum Romae e Secretaria S. Congregationis Concilii die 20 Januarii, 1877.

P. CARD. CATERINI, *Praefectus.*

J. ARCHIEPISCOPUS ANCYRANUS, *Secretarius.*

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## THE EMENDED PARAGRAPH.

The paragraph in the Creed of Pope Pius IV., amended by the above decree so as to include a profession of faith in the Dogmatic Constitutions of the Council of the Vatican, especially as regards the Primacy and Infallibility, therefore runs as follows :

Caetera item omnia a sacris canonibus et Oecumenicis Conciliis, ac praecipue a sacrosancta Tridentina Synodo, *et ab Oecumenico Concilio Vaticano tradita, definita ac declarata, praesertim de Romani Pontificis Primatu et Infallibili Magisterio,* indubitanter recipio atque profiteor; simulque contraria omnia, atque haereses quascumque ab Ecclesia damnatas et rejectas et anathematizatas ego pariter damno, rejicio, et anathematizo. Hanc veram Catholicam Fidem, extra quam nemo salvus esse potest, quam in praesenti sponte profiteor et veraciter teneo, eamdem integram et immaculatam usque ad extremum vitae spiritum, constantissime, Deo adjuvante, retinere et confiteri, atque a meis subditis seu illis, quorum cura ad me in munere meo spectabit, teneri et doceri et praedicari, quantum in me erit, curaturum, ego, idem N. spondeo voveo ac juro. Sic me Deus adjuvet, et haec Sancta Dei Evangelia.

# V.

## A SYNOPSIS

OF THE RECENT "INSTRUCTIO" OF THE HOLY SEE "DE TITULO ORDINATIONIS," ISSUED BY THE PROPAGANDA, APRIL 27, 1871, FOR MISSIONARY COUNTRIES.

1. "Porro geminus distinguitur titulus: *ecclesiasticus* scil. et *patrimonialis*. Hic postremus obtinet, cum ordinandus talibus bonis certis, stabilibus ac frugiferis, aliunde quam ab Ecclesia provenientibus, est instructus, quae ad congruam ejus sustentationem sufficere episcopi judicio censeantur. Ecclesiasticus vero titulus in *beneficialem* subdividitur ac *paupertatis*, quibus aliae quaedam veluti subsidiariae atque extraordinariae species adjiciendae sunt, tituli nempe *mensae communis*, atque *servitii Ecclesiae*, *missionis*, *sufficientiae* et *collegii*."[1] Now, the titles *beneficii*, *servitii Ecclesiae*, *sufficientiae*, and *collegii* do not exist with us. The *titulus patrimonii* may be, but is rarely, made use of in the United States.[2] We shall therefore pass over what the *Instructio* says in regard to these titles, and subjoin merely what it teaches concerning the *tituli paupertatis*, *mensae communis*, and *missionis*.

2. "1. *Paupertatis* vero titulus," says the Instruction, "in religiosa professione est positus, vi cujus qui solemnia vota in probata religione emiserunt, vel ex reditibus bonorum, si quae ipsamet religio possideat, vel ex piis fidelium largitionibus omnia communia habent quorum ad vitam alendam indigent. 2. Quem vero vocant *mensae communis* titulum, eos clericos attingit, qui religiosorum more in communi vitae disciplina degentes, aut nulla nuncupant vota, aut simplicia tantum, proindeque e domo religiosa exire aut dimitti, atque ad saeculum redire permittuntur. Neque enim ad eos pertinet titulus paupertatis. Verum ex hisce clericis ii duntaxat communis mensae titulo promoveri ad sacros ordines possunt, quorum Congregationes aut Instituta peculiari ad id privilegio ab Apostolica Sede aucta fuerint."[3]

3. "3. Titulus *missionis*, de quo potissimum heic sermo est, adhiberi consuevit pro iis, qui Apostolicarum Missionum servitio sese devovent, in locis in quibus ea est rerum conditio, ut commune Ecclesiae jus circa ea, quae ad praerequisitum pro sacra ordinatione titulum spectant, servari adamussim nequeant."[4] The *Instructio*[5] then states that ordinaries cannot ordain anyone *sub titulo missionis* except by special indult from the Holy See. The Holy See, on January 24, 1868, granted this indult to all the bishops of the United States for ten years.[6] The indult is now granted only for five years.

4. The *Instructio* having explained that those who are ordained *ad titulum missionis* must take the missionary oath, and cannot become religious without

[1] Instr. cit., n. 2. [2] C. Pl. Balt. II., n. 323; cf. Instr. cit., n. 14.
[3] Instr. cit., n. 4. [4] Ib., n. 6; cf. Konings, n. 1522. [5] N. 7.
[6] C. Pl. Balt. II., n. 323, not. 1; ib., p. cxlvii.

leave from the Holy See, continues: "Quemadmodum alii tituli, ita etiam hic (titulus missionis), juxta canonicas sanctiones, amitti potest, atque ab ordinariis auferri, de consensu tamen S. Congregationis, cujus est sic ordinatos praestiti juramenti vinculo exsolvere. Quod si amisso titulo generatim, aut etiam titulo missionis, alter ei non substituatur, sacerdos haud propterea remanet suspensus; sed ordinarii tenentur compellere ordinatos ad alterius tituli subrogationem." [7]

5. "Pariter sacerdotes regulares, qui vota solemnia nuncuparunt, atque ex apostolica indulgentia in saeculo vivere permittuntur; vel qui ediderunt vota simplicia, et e suis Congregationibus seu Institutis egressi sunt, ad sibi de canonico titulo providendum obligentur." [8]

6. "Qui titulo certae alicujus missionis ad ecclesiasticos ordines ascenderunt, ubi missionarii officium dimiserint, procul dubio, suum amittunt titulum, ac de alio sibi providere debent; si vero alterius missionis servitio deputentur, ut hujus missionis titulum assumant, nova opus erit S. Sedis concessione; neque enim eis suffragatur facultas, si quam obtinuerit ejus missionis ordinarius, memorato titulo (missionis) clericos ordinandi." [9]

## VI.

## A SYNOPSIS

### OF THE RECENT "INSTRUCTIO" "DE VISITATIONE SS. LIMINUM," ISSUED BY THE SACRED CONGREGATION "DE PROP. FIDE," ON JUNE 1, 1877.

1. The *Instructio* [10] states first that, as decreed in the *Const. Romanus Pontifex* (December 20, 1585), some bishops or archbishops are obliged to make the visit *ad sacra limina* every three years—*v.g.*, those of Italy; others every four years, as those of Germany and England; others every five years; others—*v.g.*, the bishops of the United States—every ten years.

2. Then it proceeds to explain the question: From what period is it necessary to begin in counting these three, four, five, or ten years? It says: "Saepe quaesitum fuit, undenam in computando triennio, quadriennio, etc., exordiri oporteat. Et quidem alii opinati sunt ea temporis intervalla episcopos computari debere a die quo ad sedem episcopalem in consistorio renunciati sunt, aut quo litterae apostolicae ipsis expeditae fuerunt; alii a die consecrationis; alii deinque a die acceptae possessionis sedis. Quidam etiam existimarunt initium temporis sumendum esse a die, quo dioecesis erecta fuit." [11]

[7] Instr. cit., n. 11. [8] Ib., n. 12.

[9] Ib., n 13. The *schema* of the Vatican Council *de tit. ordinationis* proposed that, as the Church had almost everywhere been despoiled of her property, and there were not sufficient benefices, and most candidates for ordination were unprovided with a *titulus patrimonii* as required by canon law, bishops be allowed to ordain candidates either *ad titulum patrimonii, as lacking the conditions required by canon law*, or *ad titulum servitii dioecesis* (Martin, Arb , p. 92; ib., Doc., p. 138). [10] N. 1–3. [11] Instr. cit., n. 4.

3. "Ad omnes hujusmodi opiniones e medio tollendas sat est, ea quae Sixtus V. constituit, sedulo inspicere; aperte enim in § 8 Constitutionis praelatae enunciatur, a die publicationis ejusdem Constitutionis Episcopos ad SS. Apostolorum cineres visitandos omnino teneri.[12] Igitur, praedicta annorum spatia omnibus incipiunt currere a die, quo bulla Sixti V. edita fuit, hoc est, a die 20 Decembris, 1585."[13]

4. The *Instructio*, having explained that the foregoing applies also to bishops of newly created dioceses,[14] continues: "Cum quispiam ad sedem episcopalem, sive ex veteribus, sive ex novis (sedibus episcopalibus) evehitur, diem quo lex Sixti V. prodiit, prae oculis habeat; et si, praefiniti temporis inde incipiens computationem, noverit ejus praedecessorem vertente triennio, quadriennio, etc., oneri SS. Liminum visitationis haud fecisse satis, sciat se ad eam absolvendam adstringi. Econtra si quis dioeceseos curam assumpserit paulo ante quam triennium, etc., sub antecessore incoeptum ad exitum perveniret, cum temporis defectu nondum in promptu possit habere quae ad statum propriae ecclesiae referendum requiruntur, succurrit remedium implorandae prorogationis quae hisce praesertim in adjunctis a S. Sede facile impertitur."[15]

5. The *Instructio* next declares that at present. owing to the extraordinary facilities and speed of travelling, legitimate causes excusing bishops from personally making the visit *ad SS. Limina* can occur but rarely; that, consequently, the Holy See desires that they should make the visit personally, not merely by proxy.[16]

[12] The *schema* of the *Council of the Vatican* "de Episcopis" (cap. iv.) proposed that these three, four, etc., years should no longer be computed from December 20, 1585, but from the day on which the decree of the Vatican Council on this head would be promulgated (Martin, Doc., p. 126).

[13] Instr. cit., n. 5, 6. [14] Ib., n. 7, 8. [15] Instr. cit., n. 9, 10. [16] Ib., n. 11–15.

# VII.

## DE EPISCOPIS IN HIBERNIA SELIGENDIS.

### I.

### DECRETUM

SACRAE CONGREGATIONIS GENERALIS DE PROPAGANDA FIDE, HABITAE DIE PRIMA JUNII ANNO 1829, DE EPISCOPIS IN HIBERNIA SELIGENDIS.

(*Supra*. n. 345, 349, 351.)

Cum ad gravissimum Electionis Hiberniae Episcoporum negotium rite sancteque absolvendum, certam aliquam methodum ubique in eo regno servandam statuere in primis opportunum esse Sacra Congregatio intellexerit, qua fieret, ut Sedes Apostolica exploratam notitiam habere possit meritorum Sacerdotum pro quibus commendationes afferuntur, ut ad aliquem Hiberniae Episcopatum eligantur, eadem Sacra Congregatio, postquam diu multumque de ea re definienda cogitavit, in generali tandem conventu die prima Junii anno 1829, referente Eminentissimo et Reverendissimo D. D. Mauro S. R. E. Cardinal Cappellari, Sacrae Congregationis Praefecto, censuit ac decrevit, methodum in toto regno Hiberniae super ea re servandam in posterum, esse debere eam quae hic describitur.

Sede itaque Episcopali, sive per antistitis obitum, translationem, aliamve ob causam in posterum vacante, Vicarius, juxta formam a sacris canonibus praescriptam, constituatur, qui dioecesi viduatae, durante vacatione, praesit. Metropolitanus Provinciae, ubi vocatio contigerit, simul atque de vacatione, et Vicarii electione certior factus fuerit, literis mandatoriis Vicario edicat, ut in diem vigesimum a dato edicto, in unum convocet omnes, ad quos pertinebit Summo Pontifici commendare tres dignos ecclesiastici ordinis viros, quorum unus a Summo Pontifice Dioecesi vacanti praeficiatur. Qui sint ii qui convocari debent, qua in forma convocandi sint, habetur ex sequenti expositione.

Qui in Hibernia nuncupantur Parochi, scilicet clerici ad ordinem Sacerdotalem evecti, censurarum immunes, qui parochiae, seu parochiarum unitarum, actuali ac pacifica possessione gaudeant, ad comitia convocandi sunt. Ubi vero adest capitulum, convocabuntur cum Parochis etiam Canonici. Vicarius, edicto Metropolitani accepto, intra octo dies singulos presbyteros supra designatos, litteris scriptis admonebit ut loco quodam opportuno, in eadem monitione nominatim exprimendo adsint die in edicto Metropolitani statuto, ad tractandum de negotio ibidem descripto. Metropolitanus ipse, vel unus de Suffraganeis ejus episcopis ab ipso delegatus, comitiis praesidebit, et nulla prorsus, et invalida habenda sunt ibidem acta, et statuta, non servata forma supra definita, sive in convocando, sive in moderando conventu. Parochis ceterisque de quibus supra, die et loco statutis, mane in unum congregatis, Missa solemnis de Spiritu Sancto

celebretur: Missaque finita, Praeses super sedile in medio ecclesiae ascendet, omnibusque, quorum nihil interest, exire jussis, foribusque ecclesiae clausis, Vicarius catalogum nominum omnium Parochorum et Canonicorum, si adsit ibi capitulum, dioecesis vacantis Praesidi tradet, qui eorumdem nomina, clara ac distincta voce, a Secretario suo recitari mandabit, et unicuique eorum, postquam nomini responderit, sedem propriam assignabit. Si unus aut plures Parochi absint, praeses a Vicario probationem exquiret, absentibus sine fraude edictum fuisse, et tali probatione admissa, absentia cujusvis numeri, modo quarta pars totius Parochorum numeri adsit, nihil obstabit, quominus rata et valida sint, quae in comitiis gerantur. Idem servandum erit circa Canonicorum numerum, in diocesi in qua Capitulum adest. Parochis ac Canonicis, qui Vicarii monitioni, sive propter adversam valetudinem, aliamve ob causam parere non valeant, liberum erit, suffragia sua propria ipsorum manu scripta, involucro sigillato inclusa, et extrinsecus ad Praesidem directa, cuivis alii Parocho vel Canonico ejusdem Dioecesis confidere; et suffragio sic habito, et probato, eadem inerit vis, ac si Parochus aut Canonicus ipse praesens adesset; modo literae certificatoriae de adversa ejus valetudine, a duobus artis medicinae peritis subscriptae, ad Praesidem transmittantur. Insuper parochus iste vel Canonicus priusquam suffragium, modo supra descripto ferat, eamdem declarationem emittet, quam ceteri Parochi ac Canonici inter comitia emittere coram praeside debebunt; ejusque declarationis coram duobus Parochis vel Canonicis emissae probatio, in medium erit proferenda coram Praeside, antequam suffragium admittatur. Comitiis ita compositis, ac Praeside tractanda proponente duo Scrutatores juxta consuetas canonum formas, eligantur. Dein Suffragatores tactis simul manu pectoribus, coram Deo pro se quisque affirment, se neque gratia, neque favore inductos ei suffragaturos, quem dignum judicent, qui Dioecesi vacanti praeficiatur. Postea suffragio in urnam immisso, singuli ad propriam sedem recedent.

His peractis, clara altaque voce a Scrutatoribus ad Praesidem, et a Praeside ad conventum, renuntianda sunt nomina trium eorum Sacerdotum, in quos major Suffragiorum numerus convenerit. Tunc Praeses, narrationem authenticam in scriptis redactam, parari coram comitiis, ejusdemque duo exemplaria a se ipso et secretario atque scrutatoribus subsignanda, exscribi curabit. Ex istis exemplaribus alterum Vicario tradendum, qui idem ad Sedem Apostolicam transmittat; alterum vero ad Metropolitanum, cujus munus erit idem ad Suffraganeos suos Episcopos in unum congregatos referre. Quaecumque jura, privilegia, et munera supra recensentur tanquam Praesidi conventus propria, eadem, Sede Metropolitana vacante, Seniori Provinciae Suffraganeo communicari volumus.

Episcopis Provinciae, Praeside Metropolitano, aut ipsius defectu Seniore Provinciae Suffraganeo in unum congregatis, et narratione authentica supra memorata coram ipsis prolata, de eadem coram Deo judicium sententiamque ferent. Praeses Episcoporum Suffraganeorum sententiam de meritis trium Sacerdotum, qui sedi Apostolicae commendantur, literis consignatam, unius-

cujusque Episcopi et Praesidis manu subscriptam, sigilloque munitam, ad Sedem Apostolicam transmittet. Semel peracta commendatione, si Episcopi judica verint tres illos commendatos minus dignos esse, quorum unus ad Episcopatum promoveatur, tunc quin detur novae commendationi locus, Summus Pontifex pro sua sapientia, viduatae ecclesiae providebit.

Si agatur de Episcopo Coadjutore, cum jure successionis cuivis Episcopo assignando, eadem, quae, sede vacante, commendandi forma servanda est, cauto tamen varia privilegia, jura et munera Metropolitano, aut Seniori Episcopi Suffraganeo jam attributa, ad Archiepiscopum, aut Episcopum cui coadjutor assignandus est, unice pertinere, illaeso tamen servato jure Metropolitani, quando Suffraganei ejus Episcopi ad ferendum suffragium convenerint. Tandem quicumque Sedis Apostolicae approbationi commendentur, cives sint indigenae Hiberniae Serenissimo Imperii Britannici Regi fidelitate incorrupta obstricti, morum integritate, pietate, doctrina, ceterisque quae Episcopum decent, dotibus insigniti.

Haec sunt, quae in commendandis Sedi Apostolicae Sacerdotibus pro episcoporum Hiberniae electione, Sacra Congregatio servanda praescripsit. Ea vero decernens, significari omnibus voluit, in documentis de hac re pertractantibus, ad Sanctam Sedem transmittendis, nihil inveniri debere, quod electionem, postulationem, nominationem innuat, sed simplicem commendationem : memorata praeterea documenta esse debere jussit, in forma supplicis libelli ita concepti, ut inde pateat nullam in Sanctam Sedem inferri obligationem eligendi unum ex commendatis.

Declaravit denique Sacra Congregatio, salvam semper atque illaesam manere debere, Sedis Apostolicae libertatem in eligendis Episcopis, ita ut commenda tiones, lumen tantum, et cognitionem Sacrae Congregationi, nunquam tamen obligationem sint allaturae.

Datum Romae ex Aedibus dic. Sac. Congregationis die 17 Octobris, 1829.

Gratis sine ulla omnino solutione quocumque titulo.

D. M. Card. Cappellari,
*Praefectus.*
C. Castracane, *Secretarius.*

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II.

## DE EPISCOPIS IN HIBERNIA SELIGENDIS.

(*Supra*, n. 351.)

Illustrissime ac Reverendissime Domine—

Initum a Sacra Congregatione consilium ut certam methodum in regno Hiberniae servandam decerneret circa sacerdotes commendandos Apostolicae Sedi quando agitur de episcoporum electione in eo totum versatum est ut memorata

methodo accurate servata Apostolica Sedes exploratam notitiam habere possit meritorum sacerdotum pro quibus commendationes afferuntur. Quare Sacra Congregatio in decreto quod die prima Junii anno 1829 ea de re factum fuerat ac die 17 Octobris ejusdem anni promulgatum est, declaravit mentem suam esse ut commendationes illae lumen tantum ac cognitionem sibi compararent circa eos inter quos Apostolica Sedes episcopos est electura. Voluit quidem diocesanum clerum consuli atque ejusdem opinionem circa sacerdotes commendandos per secreta suffragia requiri. Id autem ea tantum de causa factum est, ut sanctae Sedi constaret quinam praecipue sacerdotes aestimationem obtineant cleri dioecesani, et tale testimonium consequantur ex quo intelligi posset eos apud diocesanum clerum ad episcopatum consequendum idoneos censeri. Hoc vero unico scrutinio fieri posse manifestum est, et revera decreti superius memorati contextus hic est, ut in uno tantum scrutinio res peragatur atque ex eo scrutinio constet quinam sint *tres sacerdotes in quos major suffragiorum numerus convenerit.*

Ad Sacrae Congregationis notitiam nuper pervenit in aliquibus Hiberniae dioecesibus hoc obtinuisse ut in conventibus qui habentur a clero diocesano ad sacerdotes sanctae Sedi commendandos ex quibus episcopus aliquis eligatur non unum sed tria fiant : intelligens Sacra Congregatio hinc evenire posse ut non tres praestantiores ex clero, sed unus revera commendetur atque ei duo alii veluti ad formam tantum adjungantur meritis omnino inferiores; cupiens praeterea eadem Sacra Congregatio ubique in Hibernia eamdem methodum circa ejusmodi commendationes servari scribendum judicavit Amplitudini Tuae hanc epistolam caeteris Archiepiscopis communicandam ut in dioecesibus omnibus Hiberniae constet unicum scrutinium in conventibus cleri peragendum esse ad tres sacerdotes sanctae Sedi commendandos antequam ipsa deveniat ad episcopi alicujus Hiberniae dioecesis electionem, et hunc verum decreti diei 1 Junii 1829 sensum esse. Precor Deum interea ut amplitudinem Tuam diu sospitem ac felicem servet.

Romae ex aed. S. C. de Prop. Fide, die 25 Aprilis, 1835,

Amplitudinis tuae

Ad Officia Paratissimus,

J. CH. CARD. FRANSONIUS, *Praef.*

A. MAIUS, *Secretarius.*

R. P. D. DANIELI MURRAY,
Archiepiscopo Dublinensi,
Dublinum.

P.S.—In Decreto recentiori S. Congregationis de Prop. Fide statutum est ut conventus Episcoporum provinciae qui sententiam dicere debent de meritis trium sacerdotum a clero selectorum teneatur decem diebus post conventum cleri ipsius.

# VIII.

## INSTRUCTIO

### S. Congregationis de Propaganda Fide pro Anglia, circa commendandos ad episcopatum.

(*Supra*, n. 345. 349.)

21 Aprilis 1852.

Ut Ecclesiae noviter per Smum D. N. in Angliae regno constitutae magis in dies floreant, iisdemque Antistites jugiter praeficiantur qui vitae probitate, doctrina, zelo, ac prudentia spectatissimi existant; peropportunum visum est, si ab ecclesiasticis viris, qui sacris obeundis muneribus inter alios praestiterunt, potissimum vero testimonio Episcoporum pro tempore existentium, nonnulli Apostolicae Sedi commendentur, ex quibus eadem ad episcopalem gradum, quem magis idoneum censuerit eligere valeat.

Commendatio vero hujusmodi tanti momenti esse noscitur, ut inspectis animadversionibus ab Emo ac Rmo D. Nicolao S. R. E. Cardinali Wiseman ac RR. PP. DD. Episcopis Angliae redditis, ac re accurate perpensa, S. Congregatio de Propaganda Fide, in generali conventu habito die 5. Aprilis 1852. peculiari instructione methodum proponendam censuerit.

Cum Episcopus est constituendus, capitulariter dignitarius et canonici illius Ecclesiae conveniant, precibus de more praemissis ac praestito juramento de secreto servando, tribus vicibus suffragia ferantur circa personas Sanctae Sedi veluti digniores commendandas. Si in aliqua ex tribus vicibus in favorem nullius adsint suffragia tot numero quae excedant majorem partem vocum, actus nullius momenti existat, atque iterum suffragia ferantur.

Actus capitularis, rite descriptus atque obsignatus, transmittendus erit ad Archiepiscopum, vel ad Suffraganeum antiquiorem vacante sede archiepiscopali, vel si de commendandis ad ipsum archiepiscopatum agatur; ut coetus episcopalis, consiliis collatis, circa tria nomina alphabetico ordine descripta, quae in referat, singulis votationibus majorem suffragiorum partem obtinuerint ad S. C, suamque opinionem tradat, transmisso etiam ipso authentico capitulari actu.

Demum cum contingere aliquando possit, ut canonici legitime impediantur ne ad capitulum in quo hujusmodi fieri debet commendatio accedant, censuit S. Congregatio admittendos tunc esse eorumdem procuratores ad effectum tantum tradendi schedam cum nomine et praenomine eligendi.[1]

Caeterum animadvertendum ac declarandum censuit S. Congregatio, his omnibus contineri tantummodo commendationem, adeo ut, quando necessarium vel opportunum videatur, Apostolica Sedes suo utatur jure alterum quoque, praeter commendatos, eligendi.

[1] Sive, prout postea a S. C. explicatum est, tres schedas, cum nominibus trium virorum proponendorum. Notandum est generatim quod, sicubi aliqua discrepantia inveniatur, inter decreta Synodi et documenta ipsa ad quae referuntur, hoc inde eveniat, quod ista ab ipsa S. C. per subsequentes epistolas modificata fuerint. In praxi igitur adhaerendum textui Synodi. N. C. W.

Cum vero haec omnia S̃mo D. N. Pio Papae IX ab infrascripto S. Congregationis secretario relata fuerint in audientia diei 6. ejusdem mensis et anni, Sanctitas Sua benigne eadem probavit ad servari decrevit, contrariis quibuscumque haud obstantibus.

Datum etc.

ALEXANDER BARNABO, *Secretarius.*

## EXTRACT FROM THE STATUTES OF CATHEDRAL CHAPTERS IN ENGLAND,

### ON THE MODE OBSERVED BY THESE CHAPTERS IN THE ELECTION OF BISHOPS.

42. Post mortem Episcopi singuli canonici aderunt ut ejus funeri debito cum honore faciendo assistant. Et intra octo dies a morte Episcopi, capitulum nominabit per liberam electionem suum vicarium, qui ad tramites canonum dioecesim regere possit, quique semel nominatus non potest revocari a capitulo, quique unus tantum esse potest.

43. Tunc loco et die ab Archiepiscopo, vel, eo impedito vel demortuo, ab Episcopo seniore assignando. non tamen ultra mensem a die mortis Episcopi, capitulum convocabitur ; et, celebrata per canonicum digniorem missa de Spiritu sancto, et praestito a singulis juramento de secreto servando, canonici suffragia sua secreto deponent in urna ad hoc disposita. In primo suffragio singuli adnotabunt nomen illius personae ecclesiasticae quam ad sedem vacantem magis idoneam in Domino judicaverint. Haec vero suffragia in scriptis dabuntur, nulla discussione praecedente in conventu capitulari, et a tribus scrutatoribus in initio sessionis electis excipientur. Ita tamen plicanda sunt ut nonnisi nomen proponendi legi possit. Nomen proponentis interius scribatur, et suffragium sit bene clausum sigillo non noto. Stylus vero scriptionis sit diversus ab eo, quo utitur ordinarie is qui suffragium fert. Deinde, ex comparatione suffragiorum, scietur si quis habuerit totidem suffragia sibi favorabilia, quot excedunt medietatem suffragiorum tam praesentium, quam absentium per procuratores repraesentatorum, non vero absentium absque procuratore. Publicatis post quodlibet scrutinium nominibus, comburantur ipsa suffragia

44. Absentes tamen non valent per litteras votum suum aperire, sed per procuratorem e gremio capituli eligendum, et munitum legitimo mandato, quod non potest admitti nisi propter causam vere necessariam, clare descriptam et capitulo probandam ; vel propter infirmam valetudinem, quo in casu exprimatur quod de consilio unius saltem medici et unius canonici documento ipsi se subscribentium, capitularis nequit adesse. Procurator est admittendus duntaxat ad tres schedas tradendas continentes nomina et praenomina deligendorum.

45. Quodsi in primo scrutinio nullus fuerit assecutus majorem numerum, iterum suffragia ferantur usque dum unus fuerit illum assecutus.

46. Hac etiam ratione procedendum erit ad designationem alterius et tertii candidati. De hisce omnibus instrumentum fiet his terminis.

„Vacante propter obitum vel . . .

„R. P. D. Sede N., capitulum sessionem secretam habuit, hac die . . . sub praesentia R. P. D. Archiepiscopi vel . . . in qua post celebratam missam de Spiritu sancto, electi fuerunt scrutatores R. D . . ., R. D . . ., R. D . . .

„Facto ter scrutinio constat ex majore numero suffragiorum proponendos esse S. Sedis judicio viros ecclesiasticos quorûm nomina hic ordine alphabetico describuntur R. D. A. B.- R. D. C. D.- R. D. E. F.

„Omnia vero peracta fuerunt ad tramites decretorum Sacrae Congregationis de Propaganda Fide.

„In quorum fidem has praesentes rite publicatas in capitulo, munitas sigillo capitulari, et sub manu praepositi, secretarii, et scrutatorum, capitulum dari jussit die . . . mensis . . . anni . . .

| | | |
|---|---|---|
| „Sigil. | A. *praepositus.*<br>D. *secretarius.* | G.<br>M. } *scrutatores.*"<br>N. |

Tria vero exempla authentica fiant, quorum unum apud Capitulum asservetur, alterum apud Archiepiscopum, tertium vero ab Archiepiscopo ad Sac. C. de Propaganda Fide transmittatur.

## IX.

### HOW SHOULD OUR CONSULTORS AND IRREMOVABLE RECTORS PROCEED IN THE ELECTION OF BISHOPS?

THE form of electing Bishops to be observed by Cathedral Chapters, as laid down by Pope Innocent III. and still in force, is as follows. The election must take place in one of these three ways: namely, (*a*) either by secret suffrage or voting, (*b*) or by compromise, (*c*) or by acclamation.* The election usually takes place in the first way, namely, by voting or suffrage.

How is the voting to be conducted? 1. When those who have a right to vote are assembled, they first choose three tellers, whose duty it shall be to receive, count, and announce the votes. 2. Next the voting itself, which must be secret, takes place thus: each voter (*a*) either writes down his vote on a ticket or ballot, and hands it to the tellers, (*b*) or he communicates his vote orally to the tellers, though in a low voice, so that he may not be heard by the other voters; in this case, the tellers must at once write down the vote given orally. 3. When all have voted, the tellers count, and announce the entire vote in the presence of the voters.

If it is found that no one has obtained a majority of votes of all the voters present, the voting or balloting must be repeated until some one has obtained the requisite majority of votes.

It will be seen that our mode of voting for candidates for vacant Bishoprics

* Cap. 42, de Elect. (I. 6).

is in the main* the same as that prescribed by the general law and described above. From this it will also be seen that, with us, if after the vote has been taken it is found that the candidates have not received the requisite majority of votes, the voting must be repeated until three candidates have each received a majority of all the votes present. No candidate can be placed on the list unless he has received a majority of votes of all the voters present.

## X.

## MODE OF ELECTING BISHOPS AS PRESCRIBED BY THE GENERAL LAW OF THE CHURCH, AND AS STILL IN FORCE.

THIS mode is laid down in the following decretal issued by Pope Innocent III. in 1215: "Quia propter diversas electionum formas, quos quidem invenire conantur, et multa impedimenta proveniunt, et magna pericula imminent Ecclesiis viduatis: Statuimus, ut cum electio fuerit celebranda, præsentibus omnibus qui debent, et volunt, et possunt commode interesse, assumantur tres de collegio fide digni, qui secrete et sigillatim vota cunctorum diligenter exquirant, et in scriptis redacta mox publicent in communi: nullo prorsus appellationis obstaculo interjecto: ut is collatione habita eligatur, in quem omnes, vel major et sanior pars capituli consentit. Vel saltem eligendi potestas aliquibus viris idoneis committatur, qui vice omnium Ecclesiae viduatae provideant de pastore. Aliter electio facta non valet: nisi forte communiter esset ab omnibus, quasi per inspirationem, absque vitio celebrata. Qui vero contra praescriptas formas eligere attentaverunt, eligendi ea vice potestate priventur.

"§ 1. Illud autem penitus interdicimus, ne quis in electionis negotio procuratorem constituat, nisi sit absens in eo loco, de quo debeat advocari, justoque impedimento detentus venire non possit: super quo, si opus fuerit, fidem faciat juramento: et tunc si voluerit, uni committat de ipso collegio vicem suam.

"§ 2. Electiones quoque clandestinas reprobamus, statuentes, ut quam cito electio fuerit celebrata, solemniter publicetur."

* Conc. Pl. Balt. III., n. 15, i, ii, iii.

## XI.

## DECREE OF THE SACRED CONGREGATION OF PROPAGANDA FIDE APPOINTING MOST REV. ARCHBISHOP SATOLLI TEMPORARY DELEGATE APOSTOLIC IN THE UNITED STATES.

### DECRETUM.

Quo controversiae, quas inter Episcopos et sacerdotes amplissimae Statuum Foederatorum ditionis adesse contingit, promptiori faciliorique ratione componi possint, citiusque iis sublatis tranquillitas, quae turbari per eas solet, in Dioecesibus restituatur, peropportunum visum est huic Consilio Christianae Fidei Propagandae, occasione capta commorationis R. P. D. Francisci Satolli Archiepiscopi Naupactensis in supradicta Respublica eidem quoad illic fuerit, commissariam facultatem facere memoratas controversias cognoscendi componendique, omni appellatione remota, et servata tantum in substantialibus judicii forma, duobus tamen semper adhibitis adsistentibus spectatissimis e clero in singulas vices deligendis. Quam sententiam Ssmo. D. N. Leoni XIII. relatam ab infrascripto ejusdem S. Congregationis prosecretario in audientia diei 30 superioris mensis Octobris, Sanctitas sua benigne adprobait ratamque habuit, eaque super re praesens Decretum confici jussit.

Datum Romae, ex sedibus S. Congregationis de Propaganda Fide die 3 Novembris 1892.

[Locus Sigilli.]

M. CARD. LEDOCHOWSKI, *Praef.*
✠ A. LARISSEN, *Prosecretarius.*

## XII.

## BRIEF OF POPE LEO XIII. ESTABLISHING A PERMANENT APOSTOLIC DELEGATION IN THE UNITED STATES.

### LEO XIII., POPE, TO HIS VENERABLE BROTHER. FRANCIS SATOLLI, TITULAR ARCHBISHOP OF LEPANTO.

VENERABLE BROTHER: Greeting and apostolic blessing. The apostolic office which the inscrutable designs of God have laid on our shoulders, unequal though they be to the burden, keeps us in frequent remembrance of the solicitude incumbent on the Roman Pontiff to procure with watchful care the good of all

the churches. This solicitude requires that in all, even the remotest, regions the germs of dissension be weeded out, and the means which conduce to the increase of religion and the salvation of Christian souls be put into effect amid the sweetness of peace. With this purpose in view we, the Roman Pontiff, are wont to send from time to time to distant countries ecclesiastics who represent and act for the Holy See, that they may procure more speedily and energetically the good, prosperity, and happiness of the Catholic peoples.

For grave reasons the churches of the United States of America demand of us special care and provision. Hence we came to the conclusion that an apostolic delegation should be established in said states. After giving attentive and serious consideration to all the bearings of this step, and consulting with our venerable brothers, the cardinals in charge of the Congregation for the Propagation of the Faith, we have chosen you, venerable brother, to be entrusted with such delegation. Your zeal and ardor for religion, your wide knowledge, skill in administration, prudence, wisdom, and other remarkable qualities of mind and heart, as well as the assent of the said cardinals, justify our choice.

Therefore, venerable brother, holding you in very special affection, we, by our apostolic authority and by virtue of these present letters, do elect, make, and declare you to be Apostolic Delegate in the United States of America, at the good pleasure of ourself and this Holy See. We grant you all and singular powers necessary and expedient for the carrying on of such delegation. We command all whom it concerns to recognize in you as apostolic delegate the supreme power of the delegating Pontiff; we command that they give you aid, concurrence, and obedience in all things; that they receive with reverence your salutary admonitions and orders. Whatever sentence or penalty you shall declare or inflict duly against those who oppose your authority we will ratify, and with the authority given us by the Lord will cause to be observed inviolably until condign satisfaction be made, notwithstanding constitutions and apostolic ordinances, or any other thing to the contrary.

Given at Rome, in St. Peter's, under the Fisherman's Ring, this twenty-fourth day of January, 1893, of our Pontificate the fifteenth year.

(Signed)

[Seal of Ring.] SERAFINO, Cardinal VANNUTELLI.
(*Secretary of Briefs.*)

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